

Date: August 14, 2020

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

Subj: Class Deviation from the VA Acquisition Regulation 808.002, Priorities for Use of Mandatory Government Sources (VIEWS 03255281)

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, Class Deviations, and VA Acquisition Regulation (VAAR) 801.404, Class Deviations. The class deviation will implement legislative amendments to VA's Veteran's First Contracting Program (VFCP) to provide for an exception to small business contracting requirements applicable to the VA's procurement of certain goods and services covered under the AbilityOne program. This class deviation supersedes Class Deviation from VAAR 808.002, Priorities for Use of Government Supply Sources and VAAR Subpart 808.6, Acquisition from Federal Prison Industries, Inc., dated May 20, 2019.

2. VAAR Section Impacted. VAAR 808.002.

3. Effective Date. Immediately.

4. Expiration Date. This deviation expires when incorporated into the VAAR or superseded.

5. Applicability. This class deviation applies to all VA contracts (see definition of contract at FAR 2.101). Additionally, this deviation applies to contracts conducted 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.

6. Exception. None.

7. Background. On August 08, 2020, Public Law 116-155, the Department of Veterans Affairs Contracting Preference Consistency Act of 2020 (H.R. 4290), amending 38 U.S.C. 8127, was enacted and effective as of the same date. In summary, the new legislation requires a contracting officer of the Department to procure covered products and services on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), through the AbilityOne Program, as a priority mandatory Government source. The legislation also provides an exception when a covered product or service was procured from an eligible Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) as a result of a VA Rule of Two determination between the period after December 22, 2006 and the

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day before the date of enactment of the Act, August 07, 2020. In such a case, the covered product or service shall continue to be procured under VA's SDVOSB/VOSB set-aside program, provided two or more SDVOSBs/VOSBs are expected to provide the same or similar product at a fair and reasonable price, that offers the best value to the United States. In the event that a contract for any covered product or service previously awarded under the VFCP is terminated or expires, before it can be procured under the AbilityOne Program, the Head of the Contracting Activity or designee is required to make a determination that a reasonable expectation no longer exists that two or more SDVOSBs/VOSBs will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. The legislation provides a definition of covered products and services, and certain exceptions which the VA is implementing through this class deviation.

a. Need for Deviation. In order to ensure compliance with Public Law 116-155, VAAR part 808 must be revised to implement the aforementioned summarized changes.

b. New Policy. This class deviation revises policy regarding the priority for use of supplies and services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled and the required purchase of covered products and services from the AbilityOne Program as a mandatory Government source, with certain exceptions.

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

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Attachments

Attachment 1 – Class Deviation to VAAR part 808.002

CLASS DEVIATION

VETERANS AFFAIRS ACQUISITION REGULATION (VAAR)

PART 808—Required Sources of Supplies and Services

808.002 Priorities for use of mandatory Government sources.

(a) Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed below in descending order of priority:

(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 VAAR 808.603). Prior to considering award of a contract to Federal Prison Industries, Inc, contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified service-disabled veteran-owned small business (SDVOSB)/veteran-owned small business (VOSB) as provided in subpart 819.70, FPI remains a mandatory source in accordance with FAR 8.002.

(iv) Covered products that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7).

(A) *Definition.* As used in this paragraph—

Covered product means a product that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703); and

(2) Was included on the Procurement List on or before December 22, 2006; or

(3) Is a replacement for a product under this paragraph;

(4) Is essentially the same and meeting the same requirement as the product being replaced; and

(5) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) *Policy.* Contracting officers shall procure a covered product that is on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7.

(C) *Exceptions for covered products previously awarded to SDVOSBs/VOSBs.* If a contract for a covered product was previously awarded to a VIP-listed SDVOSB or VOSB after December 22, 2006 and in effect August 07, 2020, the requirement shall continue to be procured as a SDVOSB/VOSB set-aside provided—

(1) The contracting officer makes a determination that two or more VIP-listed SDVOSBs or VOSBs will submit offers for the same or similar product, in accordance with 38 U.S.C. 8127 and subpart 819.70; and

(2) The award can be made at a fair and reasonable price that offers the best value to the United States.

(D) *Restoring AbilityOne as a priority mandatory source for covered products on the Procurement List on certain previously awarded SDVOSB/VOSB contracts.* In the event of contract termination or expiration of a contract previously awarded as set forth in paragraph (a)(1)(iv)(C), AbilityOne remains a priority mandatory Government source, provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more SDVOSBs/VOSBs will submit offers; and

(2) Award can be made at a fair and reasonable price that offers best value to the United States.

(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), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points.

(2) *Services.* Covered services that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7).

(i) *Definition.* As used in this paragraph—

Covered service means a service that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703); and

(2) Was included on the Procurement List on or before December 22, 2006; or

(3) Is a replacement for a service under this paragraph;

(4) Is essentially the same and meeting the same requirement as the service being replaced; and

(5) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7.

(iii) *Exceptions for covered services previously awarded to SDVOSBs/VOSBs.* If a contract for a covered service was previously awarded to a VIP-listed SDVOSB or VOSB after December 22, 2006 and in effect August 07, 2020, the requirement shall continue to be procured as a SDVOSB/VOSB set-aside provided—

(A) The contracting officer makes a determination that two or more VIP-listed SDVOSBs or VOSBs will submit offers for the same or similar services, in accordance with 38 U.S.C. 8127 and subpart 819.70; and

(B) The award can be made at a fair and reasonable price that offers the best value to the United States.

(iv) *Restoring AbilityOne program as a priority mandatory Government source for covered services on the Procurement List on certain previously awarded SDVOSB/VOSB contracts.* In the event of contract termination or expiration of a contract previously awarded to SDVOSBs or VOSBs as set forth in paragraph (a)(2)(iii), AbilityOne remains a priority mandatory Government source, provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(A) Two or more SDVOSBs/VOSBs will submit offers; and

(B) Award can be made at a fair and reasonable price that offers best value to the United States.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302-2, 8.405-6 and 13.106-1 for justification requirements).

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