1. **Purpose.** To issue a class deviation to the VAAR in accordance with Federal Acquisition Regulation 1.404, Class deviations, and VAAR 801.404, Class deviations.

2. **VAAR Sections Impacted.** VAAR part 819 and part 852.

3. **Effective Date.** Immediately.

4. **Expiration Date.** This deviation expires when incorporated into the VAAR or is otherwise rescinded or superseded.

5. **Applicability.** This class deviation applies to all VA contracting activities and applies to all VA solicitations and contracts awarded to SDVOSBs or VOSBs, on or after October 31, 2020, pursuant to the authority of 38 U.S.C. § 8127.

6. **Exception.** None.

7. **Background.**

   a. **Need for Deviation.** This class deviation implements the requirements of P. L. 116-183, Protecting Business Opportunities for Veterans Act of 2019 to amend 38 U.S.C. § 8127, applicable to all VA solicitations and contracts awarded to small business concerns owned and controlled by Veterans on or after October 31, 2020.

   b. **New Policy.** This class deviation adds language to VAAR 819.7001 regarding general responsibilities. It also adds 819.7009(b) and 819.7009(c) as the prescription for use of the two new VAAR clauses 852.219-77, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, and 852.219-78, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products. The clauses require:

   1) The contracting officer to insert the specific performance requirements (i.e., limitations on subcontracting requirements set forth in 15 U.S.C. § 657s and in VAAR 852.219-10 and 852.219-11);

   2) The offeror to acknowledge that certification is subject to 18 U.S.C. § 1001; and
3) The offeror to complete and sign the certification.

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) at [va.procurement.policy@va.gov](mailto:va.procurement.policy@va.gov).

Angela Billups
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Date: 2021.09.15 17:18:46 -04'00'

Angela Billups, Ph.D.

Attachment—Class Deviation to Implement SDVOSB and VOSB Certification Requirements—VAAR Part 819 and Part 852 (SEP 2021) (DEVIAITION)
819.7001 General.

***

(e) The Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), pursuant to Pub. L. 116-183, will monitor compliance with the requirement in 38 U.S.C. 8127(k) (see 819.7003(f)) for the contracting officer to obtain a certification from an SDVOSB/VOSB concern that the offeror will comply with the limitations on subcontracting certification requirements at 819.7009(b) and (c) as provided in the solicitation and resulting contract. The OSBDU and CAO shall refer any violations or suspected violations to the VA Office of Inspector General.

(f) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith with respect to the requirements described in 819.7003 paragraph (f), such SDVOSB/VOSB shall be subject to any or all of the following—

(1) Referral to the VA Suspension and Debarment Committee;

(2) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1));

(3) Prosecution for violating section 1001 of title 18.

(g) Pursuant to Pub. L. 116-183, the Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.
819.7003 Eligibility.

(f) Pursuant to the authority of 38 U.S.C. 8127(k)(2), a contracting officer may award a contract under 38 U.S.C. 8127 only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see 819.7009). The formal certification must be completed, signed, and returned with the offeror’s bid, quotation, or proposal. The Government will not consider offers from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

(g) In some instances, SDVOSB eligibility may be extended to businesses owned and operated by surviving spouses, as set forth in 802.101;

(h) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented its SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This debarment includes all principals in the business. See 809.406, Debarment.

819.7009 Contract clauses.

(a) The contracting officer shall insert clause 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, or clause 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside, as applicable, in solicitations and contracts, including BPAs and orders, for acquisitions that are evaluated, set-aside or awarded on a sole source basis under this subpart. This includes multiple-award contracts when orders may be set aside for SDVOSBs/VOSBs as described in FAR 8.405-5 and FAR 16.505(b)(2)(i)(F).

(b) The contracting officer shall insert the clause at 852.219-77, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, in solicitations and contracts for services and construction, including BPAs and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs.

(c) The contracting officer shall insert the clause at 852.219-78, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products, in solicitations and contracts for supplies or products, including BPAs and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to
SDVOSBs/VOSBs. The contracting officer shall appropriately tailor the clause as set forth in paragraph (a)(2)(iii).

* * * * *
VAAR PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—Text of Provisions and Clauses

* * * * *

852.219-77 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.

As prescribed in 819.7009(b), insert the following clause:

VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (SEP 2021) (DEVIATION)

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [Contracting Officer check the appropriate box below based on the predominant NAICS code assigned to the instant acquisition as set forth in FAR 19.102.]

(i) □ Services. In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii) □ General construction. In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii) □ Special trade construction contractors. In the case of a contract for special trade contractors, the contractor will not pay more than 75% of
the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. The Contracting Officer may, at their discretion, require the Contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the Contracting Officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed, and returned with the offeror’s bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.
Certification:

I hereby certify that if awarded the contract, [insert name of offeror] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of [insert name of offeror].

Printed Name of Signee: ________________________________
Printed Title of Signee: ________________________________
Signature: ________________________________
Date: ________________________________
Company Name and Address: ________________________________

(End of clause)

852.219-78 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.

As prescribed in 819.7009(c), insert the following clause. The Contracting Officer shall tailor the clause in paragraph (a)(2)(iii) as appropriate:

VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (SEP 2021) (DEVIATION)

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [Offeror check the appropriate box]

(i) □ In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.
(ii) □ In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. The offeror understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification. [Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying itself as either a manufacturer or nonmanufacturer]:

(i) □ Manufacturer or producer. The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii) □ Nonmanufacturer. The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required to qualify as a nonmanufacturer. [Offeror fill-in—check each box below.]

□ The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

□ The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

□ The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii) □ The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. [Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.]
or [Contracting Officer tailor clause to remove one or other block under subparagraph (iii).]

☐ If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns. [Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.]

(3) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(4) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. Contracting Officer may, at their discretion, require the Contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the Contracting Officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed, and returned with the offeror's bid, quotation, or proposal. The
Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification:

I hereby certify that if awarded the contract, [insert name of offeror] qualifies as a manufacturer or nonmanufacturer as stated herein and that if awarded the contract, [insert name of offeror] will comply with the limitations on subcontracting requirement specified in the resultant contract, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. I further certify that I am authorized to execute this certification on behalf of [insert name of offeror].

Printed Name of Signee: ________________________________

Printed Title of Signee: ________________________________

Signature: __________________________________________

Date: ______________________

Company Name and Address: ____________________________

(End of clause)

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