

Date: December 2, 2015

From: Associate Deputy Assistant Secretary for Procurement Policy, Systems and Oversight (003A2) and Deputy Senior Procurement Executive

Subj: Class Deviation from VA Acquisition Regulation (VAAR) 801.602-70, 801.602-71 & 801.602-72 (VAIQ 7640793)

To: VA Heads of Contracting Activities (HCAs)

1. **Purpose:** To issue a Class Deviation in accordance with Federal Acquisition Regulation (FAR) subpart 1.404, Class Deviations, and Department of Veterans Affairs Acquisition Regulation (VAAR) 801.404, Class Deviations, to deviate from 801.602-70, 801.602-71, and 801.602-72.

2. **VAAR Sections Impacted:** VAAR 801.602-70, 801.602-71, and 801.602-72.

3. **Effective Date:** December 15, 2015.

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deviation will remain in effect until incorporated into the VAAR or the new VA Acquisition Manual (VAAM) or otherwise rescinded.

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

6. **Background:** The Acting Chief Acquisition Officer (CAO) of the Department of Veterans Affairs (VA) has instituted the Employee Empowerment Initiative (EEI) and one of the outcomes of this initiative is the goal to improve OALC operating efficiency by streamlining decision making and acquisition-related approval processes to the lowest practicable subordinate acquisition activity level. The revised oversight process establishes a more decentralized, less labor-intensive oversight process that efficiently allocates time and resources. This package sets forth the required information in accordance with FAR 1.404 and VAAR 801.404 to support a class deviation to achieve some of the EEI's objectives.

a. Current VAAR 801.602-70 Policy:

801.602-70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602-71 through 801.602-76 that is submitted for technical or legal review is submitted through or by an official at least one level above the contracting officer.

(b) Before opening a bid, awarding a contract, or signing a contract-related document as specified in 801.602-71 through 801.602-76, the contracting officer shall ensure that the appropriate VA official, including appropriate staff of the Acquisition Resources Service regional or VA Central Office, has reviewed and concurred with the document.

(c) Before signing a contract for a Veterans Benefits Administration field facility for any guidance center or vocational rehabilitation service with an anticipated expenditure of \$100,000 or more, the contracting officer shall ensure that the Director, Vocational Rehabilitation and Employment Service, has reviewed and approved the solicitation or proposed contract.

(d) When the following items are for the management, sale, or lease of properties acquired by VA after liquidation of a guaranteed, direct, acquired, or vendee loan, the review requirements specified in 801.602-71 through 801.602-76 do not apply:

- (1) Agreements.
- (2) Licenses.
- (3) Easements.
- (4) Deeds.

(e) If there is insufficient time for the legal review required in 801.602-75(a)(3), the contracting officer (except contracting officers in the Office of Construction and Facilities Management) must at least obtain verbal concurrence from Acquisition Resources Service staff before issuing a change order where:

- (1) The change order (unilateral agreement) has an anticipated value of \$100,000 or more; or
- (2) The change order is for a time extension of 60 days or more.

(f) Unless otherwise stated, all dollar values in 801.602-71 through 801.602-76 are expressed in total dollars involved in the acquisition action.

(1) The contracting officer may not consider the positive and negative status of the figures in determining the total dollar values involved.

(2) An acquisition of \$550,000 with a trade-in credit of \$70,000 would be valued at \$620,000 for legal or technical review purposes rather than the net amount of \$480,000. An Energy Savings Performance Contract requiring payment from savings of \$10,000,000 to the contractor over the life of the contract would be valued at \$10,000,000, despite the fact that there is no immediate cost to VA and no payment if there are no savings.

(g) By separate notice, the DSPE may require technical review of any contract-related materials, regardless of dollar value.

(h) Except as set forth in 801.602-73 and 801.602-75, at its discretion, the Office of Acquisition and Materiel Management may request OGC review.

(i) The requirements of this section or sections 801.602-71 through 801.602-76 do not apply to contracts awarded by or on behalf of the VA Office of Inspector General.

(j) Contracting officers and purchase card holders must ensure compliance with separate guidance on information technology (IT) tracking and approval prior to processing requests for acquisitions of IT and telecommunications software, equipment, and/or services, regardless of dollar value.

b. Current 801.602-71 Policy:

801.602-71 Basic review requirements.

Contracting officers must obtain technical review from Acquisition Resources Service staff of the documents set forth in column one of Table 801.602-71 that have anticipated award values equal to or greater than the value in column two.

TABLE 801.602-71

Type of Procurement Actions	Anticipated contract award value
(a) Supply or service solicitations or quotations (except as provided in 801.602-72 through 801.602-75) (includes indefinite quantity, option year, and multi-year solicitations or quotations where the contracting officer reasonably expects expenditures of \$500,000 or more, inclusive of options)	\$500,000 or more.
(b) Supply or service solicitations or quotations where a consolidated acquisition activity is performing acquisitions for three or more physically separated VA medical centers (excluding outpatient clinics)	\$750,000 or more.
(c) Fixed price, sealed bid construction solicitations, other than 8(a) construction solicitations	\$1 million or more.
(d) 8(a) construction solicitations and task orders	\$500,000 or more.
(e) Request for Proposal (negotiated) construction solicitations and task orders	\$500,000 or more.
(f) Proposed task/delivery orders and blanket purchase agreements (includes orders under Federal Supply Schedule contracts)	\$500,000 or more.
(g) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts (see 816.102(b))	\$100,000 or more.

(h) Utility service agreements	\$50,000 or more.
(i) Solicitations for advisory and assistance services (see 837.2)	\$100,000 or more.
(j) Proposed letter contracts and ensuing formal contracts	\$25,000.

c. Current VAAR 801.602-72 Policy:

801.602-72 Exceptions and additional review requirements.

(a) In addition to the general review requirements in 801.602-71, contracting officers must obtain technical reviews from Acquisition Resources Service staff of any proposed agreement that is unique, novel, or unusual.

(b) Contracting officers must obtain technical reviews from Acquisition Resources Service staff of the following:

(1) Documents relating to bonds (see FAR 28.102-1 and 28.203 through 28.203-5) as follows:

(i) An irrevocable letter of credit.

(ii) A tripartite escrow agreement.

(iii) An individual surety bond. (Note that the FAR at 28.203(f) also requires legal review of the documents pledging the assets of an individual surety.)

(2) Proposed novation and change-of-name agreements (see FAR Subpart 42.12).

(3) Solicitations or proposed contracts containing an economic price adjustment clause (other than a pre-approved VA clause) based on a cost index of material or labor (e.g., the urban consumer price index (CPI-U) (see FAR 16.203-4(d)) or where one of the economic price adjustment clauses specified in FAR 16.203-4 are used.

(4) Proposed multi-year contracts where the cancellation ceiling exceeds 20 percent of the contract amount, regardless of the dollar value of the proposed contract (see 817.105-1(b)).

(5) Proposed solicitations where the contract term total of the basic and option periods may exceed 5 years, regardless of the dollar value of the proposed acquisition (see 817.204).

(6) Proposed membership agreements in a group purchasing organization.

(7) A proposed termination settlement or determination of amounts due the contractor under a terminated contract that involves the expenditure of \$100,000 or more of Government funds. Acquisitions Resources Service staff shall obtain legal review (see 849.111-70).

(8) Consignment agreements with an anticipated expenditure of \$250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(c) Contracting officers, including purchase card holders, must obtain technical and legal review of all proposed contracts with hotels or similar facilities for conferences or similar functions (e.g., training, meetings) where VA's commitment, expenditure, and liability (combined) exceed \$25,000. This dollar figure is based on the combination of all direct costs to VA under the contract (e.g., conference rooms, audio-visual charges, refreshments, catering) and all potential liability (e.g., room guarantee liability, cancellation costs). Even if there is no direct cost to VA, if the proposed contract includes a guarantee on room usage or a cancellation fee that could potentially exceed \$25,000, the proposed contract requires legal and technical review. Signing a contract committing VA to hold a conference at a particular hotel is procurement and procurement laws and regulations must be followed.

d. Need for Deviation from VAAR 801.602-70, 801.602-71 and 801.602-72: The Acting Chief Acquisition Officer (CAO) directed certain discrete Procurement Decision Making and Review/Approval Authorities will be delegated where practicable to lower subordinate acquisition activity levels in order to foster a more streamlined review and approval process in support of the Employee Empowerment Initiative. In order to delegate the approval authority below the DSPE to the HCAs or designee, as applicable, a deviation to the current codified VAAR is required. A change to the existing VAAR requires publication in the Federal Register and receipt of public comments. Going forward, most delegations will be contained within the new VAAM, along with further procedures, guidance and instruction which will permit revising approval levels or office titles and positions in a more expedited fashion without accomplishing a deviation to the codified VAAR. Until the publication of the affected revised VAAR part and the publication of VA's internal procedural guidance via the VAAM, a deviation from the existing VAAR is required to implement EEI recommendations. This deviation revises oversight responsibility and delegates it to the HCA level and below in compliance with

the streamlining initiative detailed above. VAAR 801.602-72 is being removed in its entirety as it conflicts with the revised review process.

e. VAAR 801.602-70 New Policy:

801.602-70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602-71 through 801.602-76 that is submitted for technical or legal review is submitted in accordance with their respective HCA's contract review process.

(b) Under no circumstances shall a CO release a solicitation or sign a contract or modification unless technical and legal reviews have been completed in accordance with the HCA contract review process.

(c) The technical reviewer or at least one technical reviewer (where there is more than one), holds a Federal Acquisition Certification in Contracting commensurate with the procurement value and appropriate expertise in the subject area.

f. VAAR 801.602-71 New Policy:

801.602-71 Basic review requirements.

Contracting officers must obtain a technical review and/or legal review in accordance with their respective HCA's contract review process (see items (a) through (i) in Table 801.602-71. Table 801.602-71 also sets forth the review and approvals required for the contracting actions listed in items (j) through (r).

Table 801.602-71

Action	Anticipated Contract Award Values
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<p>(a) Supply or service solicitations or quotations (except as provided in 801.602-73 through 801.602-75) (includes indefinite quantity, option year, and multi-year solicitations or quotations where the contracting officer reasonably expects expenditures of \$500,000 or more, inclusive of options)</p>	<p>\$500,000 or more.</p>
<p>(b) Supply or service solicitations or quotations where a consolidated acquisition activity is performing acquisitions for three or more physically separated VA medical centers (excluding outpatient clinics)</p>	<p>\$750,000 or more.</p>
<p>(c) Fixed price, sealed bid construction solicitations, other than 8(a) construction solicitations</p>	<p>\$1 million or more.</p>
<p>(d) 8(a) construction solicitations and task orders</p>	<p>\$500,000 or more.</p>
<p>(e) Request for Proposal (negotiated) construction solicitations and task orders</p>	<p>\$500,000 or more.</p>
<p>(f) Proposed task/delivery orders and blanket purchase agreements [includes orders under Federal Supply Schedule (FSS) contracts except for BPAs for Supplies under FSS contracts that are not issued by the National Acquisition Center (NAC). See (n) below for those thresholds.]</p>	<p>\$500,000 or more.</p>
<p>(g) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts (see 816.102(b))</p>	<p>\$100,000 or more.</p>
<p>(h) Utility service agreements</p>	<p>\$50,000 or more.</p>
<p>(i) Solicitations for advisory and assistance services (see 837.2)</p>	<p>\$100,000 or more.</p>
<p>Action</p>	<p>Review Levels and Thresholds</p>

(j) Interagency Acquisitions (Best Procurement Approach Determination) (For Direct Acquisitions Only).	- ≤ \$5M: CO/Peer Review - \$5M-\$50M: One level above the CO - >\$50M: HCA or designee
(k) Acquisition Plans	- ≤ \$5M: CO/Peer Review - \$5M-\$100M: One level above the CO - >\$100M: HCA or designee
(l) Stop Work Orders	- One Level above the CO for all Stop Work Orders - OGC Review
(m) Use of Letter Contracts	- One Level above the CO for all Letter Contracts - OGC Review
(n) BPAs for Supplies under Federal Supply Schedules (FSS) that are not issued by the National Acquisition Center (NAC).	- >\$50M: Business Clearance Review - >\$50M: OGC Review
(o) Use of Economic Price Adjustment (EPA) Clauses	-HCA or Designee for any use of EPA Clauses
(p) Use of Incentive Contracts	-HCA or Designee for any use of Incentive Contracts
(q) Option Year Contracts Exceeding 5 Years (VAAR 817.204)	-HCA or Designee for any use of Option Year Contracts Exceeding 5 Years
(r) Commercial Interim or Advance Payment Terms (VAAR 832.402)	-HCA or Designee for any use of Commercial Interim or Advance Payment Terms

g. VAAR 801.602-72 New Policy:

801.602-72, Exceptions and additional review requirements, is hereby removed from the VAAR. This will now read as follows: **[Reserved]**

7. **Attachment:** VA Class Deviation from VA Acquisition Regulation 801.602-70, 801.602-71, and 801.602-72.

8. **Additional Information:** Questions and concerns should be addressed to the Office of Acquisition and Logistics (003A), Procurement, Policy and Warrant Management Service (003A2A) at (202) 632-5288 or email: va.procurement.policy@va.gov.

/s/

C. Ford Heard III

Attachment

Distribution:

Under Secretaries for Health, Benefits, and Memorial Affairs
Chief Facilities Management Officer, Office of Facilities Management
Directors, VHA Service Area Offices
Directors and Network Contract Managers, Veterans Integrated Service Networks
Directors, VA Medical Center Activities, Domiciliary, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices
Directors, Denver Acquisition and Logistics Center, Corporate Franchise Datacenter, Records Management Center, VBA Benefits Delivery Centers, and VA Health Administration Center Executive Director and Chief Operating Officer, VA National Acquisition Center, National Cemetery Administration

Class Deviation

Department of Veterans Affairs Acquisition Regulation (VAAR) 801.602-70, General review requirements; 801.602-71, Basic review requirements; and 801.602-72, Exceptions and additional review requirements

801.602-70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602-71 through 801.602-76 that is submitted for technical or legal review is submitted in accordance with their respective HCA's contract review process.

(b) Under no circumstances shall a CO release a solicitation or sign a contract or modification unless technical and legal reviews have been completed in accordance with the HCA contract review process.

(c) The technical reviewer or at least one technical reviewer (where there is more than one), holds a Federal Acquisition Certification in Contracting commensurate with the procurement value and appropriate expertise in the subject area. Authority to make the determinations under FAR 9.405-1 is delegated to the SPE and is further delegated to the DSPE. The DSPE further delegates this authority to the HCA.

801.602-71 Basic review requirements.

Contracting officers must obtain a technical review and/or legal review in accordance with their respective HCA's contract review process (see items (a) through (i) in Table 801.602-71. Table 801.602-71 also sets forth the review and approvals required for the contracting actions listed in items (j) through (r).

Table 801.602-71

Action	Anticipated Contract Award Values
(a) Supply or service solicitations or quotations (except as provided in 801.602-73 through 801.602-75) (includes indefinite quantity, option year, and multi-year solicitations or quotations where the contracting officer reasonably expects expenditures of \$500,000 or more, inclusive of options)	\$500,000 or more.

<p>(b) Supply or service solicitations or quotations where a consolidated acquisition activity is performing acquisitions for three or more physically separated VA medical centers (excluding outpatient clinics)</p>	<p>\$750,000 or more.</p>
<p>(c) Fixed price, sealed bid construction solicitations, other than 8(a) construction solicitations</p>	<p>\$1 million or more.</p>
<p>(d) 8(a) construction solicitations and task orders</p>	<p>\$500,000 or more.</p>
<p>(e) Request for Proposal (negotiated) construction solicitations and task orders</p>	<p>\$500,000 or more.</p>
<p>(f) Proposed task/delivery orders and blanket purchase agreements [includes orders under Federal Supply Schedule (FSS) contracts except for BPAs for Supplies under FSS contracts that are not issued by the National Acquisition Center (NAC). See (n) below for those thresholds.]</p>	<p>\$500,000 or more.</p>
<p>(g) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts (see 816.102(b))</p>	<p>\$100,000 or more.</p>
<p>(h) Utility service agreements</p>	<p>\$50,000 or more.</p>
<p>(i) Solicitations for advisory and assistance services (see 837.2)</p>	<p>\$100,000 or more.</p>
<p>(j) Interagency Acquisitions (Best Procurement Approach Determination) (For Direct Acquisitions Only.)</p>	<ul style="list-style-type: none"> - ≤ \$5M: CO/Peer Review - \$5M-\$50M: One level above the CO - >\$50M: HCA or designee
<p>(k) Acquisition Plans</p>	<ul style="list-style-type: none"> - ≤ \$5M: CO/Peer Review - \$5M-\$100M: One level above the CO - >\$100M: HCA or designee
<p>(l) Stop Work Orders</p>	<ul style="list-style-type: none"> - One Level above the CO for all Stop Work Orders - OGC Review

(m) Use of Letter Contracts	<ul style="list-style-type: none"> - One Level above the CO for all Letter Contracts - OGC Review
(n) BPAs for Supplies under Federal Supply Schedules (FSS) that are not issued by the National Acquisition Center (NAC).	<ul style="list-style-type: none"> - >\$50M: Business Clearance Review - >\$50M: OGC Review
(o) Use of Economic Price Adjustment (EPA) Clauses	-HCA or Designee for any use of EPA Clauses
(p) Use of Incentive Contracts	-HCA or Designee for any use of Incentive Contracts
(q) Option Year Contracts Exceeding 5 Years (VAAR 817.204)	-HCA or Designee for any use of Option Year Contracts Exceeding 5 Years
(r) Commercial Interim or Advance Payment Terms (VAAR 832.402)	-HCA or Designee for any use of Commercial Interim or Advance Payment Terms

801.602-72 Exceptions and additional review requirements. [Reserved]

END