

Date: May 5, 2016

From: Acting Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight and Deputy Senior Procurement Executive

Subj: Class Deviation Veterans Affairs Acquisition Regulation (VAAR) Part 808, Required Sources of Supplies and Services, and VAAR Subpart 808.002, Priorities for Use of Government Supply Sources (VAIQ 7604698)

To: Head of Contracting Activities

1. **Purpose:** To revise VAAR Subpart 808.002 to comply with Federal Acquisition Regulation (FAR) changes required by Federal Acquisition Circular (FAC) 2005-72, 78 FR 80376, December 31, 2013, effective January 30, 2014 via a Class Deviation.

2. **VA Acquisition Regulation (VAAR) Sections Impacted:** VAAR Part 808, to include VAAR Subpart 808.002.

3. **Effective Date:** Immediately.

4. **Expiration Date:** Effective until incorporated into the revised VAAR or the VA Acquisition Manual (VAAM).

5. **Applicability:** This deviation applies to all procurements subject to FAR Subpart 8.002, Priorities for Use of Mandatory Government Sources.

6. **Background:**

a. **Current VAAR Policy:**

VAAR Subpart 808.002, Priorities for Use of Government Supply Sources, reads as follows:

(a) Supplies.

(1) As used in FAR Subpart 8.002(a)(1)(i), the term “agency inventories” includes Supply Fund Stock and VA Excess.

(2) A national committed use contract awarded by the VA National Acquisition Center has a priority between wholesale supply sources (FAR Subpart 8.002(a)(1)(v)) and mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)).

(3) Federal Supply Schedule contracts awarded by the VA National Acquisition Center in Federal Supply Classification (FSC) Groups 65 and 66 shall be mandatory for use by VA and shall have the same order of priority as mandatory Federal Supply Schedules (FAR Subpart 8.002(a)(1)(vi)). VA contracting officers must place orders against Federal Supply Schedules contracts awarded by the VA National Acquisition Center in FSC Groups 65 and 66 in the following descending order of priority:

(i) Nationally awarded Blanket Purchase Agreements (BPAs), issued by the VA National Acquisition Center against Federal Supply Schedules.

(ii) Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against Federal Supply Schedules.

(iii) Federal Supply Schedules without BPAs.

(4) Indefinite delivery indefinite quantity (IDIQ) contracts, awarded by VISN, regional, or local facility VA contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts shall have an order of priority between optional use Federal Supply Schedules (FAR Subpart 8.002(1)(a)(vii)) and commercial sources (including educational and nonprofit institutions) (FAR Subpart 8.002(1)(a)(viii)). VA contracting officers must place delivery orders against IDIQ contracts, awarded by VISN, regional, or a local facility contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts in the following descending order of priority:

(i) VISN or regionally awarded contracts.

(ii) Locally awarded contracts.

(5) Open market purchases (purchases not falling within any of the higher priorities in paragraphs (a)(2) through (4) of this section) have the same priority as commercial sources (including educational and nonprofit institutions) (FAR Subpart 8.002(1)(a)(viii)).

(b) Unusual and compelling urgency. The contracting officer may use a source lower in priority than as specified in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see FAR Subpart 6.302-2). The Contracting Officer must include a justification for each deviation in the procurement file.

(c) Eligible Beneficiaries. (1) A contracting officer may authorize an

acquisition from the Veterans Canteen Service or a commercial source when a VA healthcare official (e.g., social worker, physician) determines that personal selection of shoes, clothing, and incidentals will result in a therapeutic benefit to an eligible beneficiary.

(2) The contracting officer must cite Federal Prison Industries, Inc., clearance No. 1206 in the purchase document for any purchase from a commercial source of dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A.

b. Need for Deviation: FAC 2005-72 deleted the mandatory requirement to use Federal Supply Schedules (FSS). This deviation deletes the mandatory general FSS from the VAAR, but maintains the Veterans Affairs FSS for Federal supply Classes (FSC) 65 and 66 as a mandatory source. This action requests Deputy Senior Procurement Executive (DSPE) approval of a class deviation in accordance with the Federal Acquisition Regulation (FAR) Subpart 1.404, Class deviations, VAAR Subpart 801.404, Class Deviations, to deviate from VAAR part 808, Required Sources of Supplies and Services, and VAAR Subpart 808.002, Priorities for Use of Government Supply Sources.

A final rule was issued in FAR Case 2009-024 amending FAR Subpart 8.002, Priorities for Use of Mandatory Government Sources, to clarify the priority of sources of supplies and services for use by the Government. Specifically, Federal Supply Schedules is moved to a new section (FAR Subpart 8.004) as a non-mandatory Government source of supply. All references to “mandatory” FSS were removed.

FAR Subpart 7.102(a)(4) of the same final rule “encourages” agencies to use FSS and other existing contract vehicles before using commercial sources in the open market.

Therefore, the existing VAAR Subpart 808.002, Priorities for use of Government supply sources, will be retitled and revised, and a new VAAR section will be added to VAAR Part 808 to establish priorities for use of mandatory VA sources. As such VAAR Part 808 now includes: VAAR Subpart 808.002-70, Priorities for Use of Department of Veterans Affairs (VA) mandatory sources, in order to align with the FAR changes.

c. New Policy: This deviation deletes and replaces VAAR Subpart 808.002 text. The existing VAAR Subpart 808.002, Priorities for Use of Government Supply Sources, and associated text will be replaced with “VAAR Subpart 808.002-70, Priorities for use of Department of Veterans Affairs (VA) mandatory sources.” Full text is provided at the attached Class Deviation.

Page 4

Subject: Class Deviation from VA Acquisition Regulation Part 808, Required Sources of Suppliers and Services, and 808.002, Priorities of Use of Government Supply Sources

7. **Attachment:** VA Deviation from VAAR Part 808 and VAAR Subpart 808.002 - Determination and Findings, and Class Deviation.

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/

Sheila P. Darrell

Attachment

Class Deviation from the VA Acquisition Regulation (VAAR) Part 808 and VAAR Subpart 808.002

Findings

A final rule was issued in FAR Case 2009-024, and published in the Federal Register, Vol. 78, No. 251, Tuesday, December 31, 2013, Rules and Regulations; amending FAR Subpart 8.002, Priorities for Use of Mandatory Government Sources, to clarify the priority of sources of supplies and services for use by the Government. Specifically, Federal Supply Schedules is moved to a new section (FAR Subpart 8.004) as a non-mandatory Government source of supply. All references to "mandatory" FSS were removed. This change was effective January 30, 2014.

The impetus for this rule change was a Government Accountability Office (GAO) decision in the protest of Murray-Benjamin Electric Company, B-298481, 2006 CPD 129, September 7, 2006 at (<http://www.gao.gov/decisions/bidpro/298481.pdf>). As a result of this GAO decision, clarification in FAR Part 8 was needed on the use and consideration of FSS contracts before commercial sources in the open market.

The rule amended FAR Subpart 8.002 as follows:

- (1) Title revised to clearly indicate that the section established the priorities for mandatory Government sources.
- (2) The term "Mandatory FSS" was removed.
- (3) "Optional Use FSS" was re-named "FSS" and moved to a new section (FAR Subpart 8.004) as a non-mandatory source.
- (4) Commercial sources, previously listed under FAR Subpart 8.002(a), and Federal Prison Industries (FPI), Inc., listed as a source for services at FAR Subpart 8.002(a)(2), was moved to the new section as non-mandatory sources because neither is a "mandatory Government source."

A new section, (FAR Subpart 8.004), Use of other sources, was added to list non-mandatory sources that agencies are "*encouraged*" to consider after first considering the mandatory sources. This section highlights existing contracts intended for use by multiple agencies (e.g., FSS, Government-wide acquisition contracts (GWACs), and multi-agency contracts (MACs)) and ordering instruments intended for use by multiple agencies, such as BPAs under FSS contracts (e.g., Federal Strategic Sourcing Initiative (FSSI) agreements).

The existing contract vehicles are not listed in any order of priority, and separate paragraphs distinguish supplies from services. When obtaining services, agencies are encouraged to consider the same sources listed for supplies under FAR Subpart 8.004, with the addition of FPI as another non-mandatory source for services pursuant to FAR Subpart 8.6, Acquisition from FPI. Agencies are encouraged to consider these sources before satisfying requirements for supplies and services from commercial sources in the open market.

Therefore, it is necessary to issue a class deviation to VAAR Subpart 808.002, Priority for Use of Government Supply Sources, for the following reasons:

(1) Replace existing policy in VAAR Subpart 808.002 with revised text in VAAR Subpart 808.002, Priorities for Use of Mandatory Government Sources, to define the mandatory use of supplies within VA. It also clarifies exceptions to the use of mandatory sources for unusual and compelling urgency;

(2) Remove the existing VAAR Subpart 808.002(a) - (b) and replace it with VAAR Subpart 808.002-70, Priorities for use of Department of Veterans Affairs (VA) Mandatory Sources and procurement instruments, with revised text, recognize the FAR language, and to define the mandatory use of supplies within VA. It also clarifies exceptions to the use of mandatory sources for unusual and compelling urgency.

Determination

In accordance with FAR Subpart 1.404 and VAAR Subpart 801.404, I hereby issue a class deviation to change VAAR Part 808, and VAAR Subpart 808.002. Contracting officers shall follow the provisions of the revised VAAR Part 808, and VAAR Subpart 808.002.

/s/

Sheila P. Darrell
Acting ADAS for Procurement, Policy,
Systems, and Oversight

May 5, 2016

Date

**Class Deviation from the Department of Veterans Affairs
Acquisition Regulation 808.002-70 Priorities for Use of Department of
Veterans Affairs (VA) Mandatory Sources**

(a) Unless otherwise provided by law or required by FAR Subpart 8.002 or 8.003, the Department of Veterans Affairs (VA) shall satisfy requirements for supplies and services using the order of priorities 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 (FAR subpart 8.1).

(iii) *Federal Prison Industries, Inc.* (FAR subpart 8.6).

(iv) *Supplies that are on the Procurement List* maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (FAR subpart 8.7).

(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), and military inventory control points.

(vi) *VA Prime-Vendor and national committed use contracts* awarded by the VA National Acquisition Center (NAC) or Strategic Acquisition Center (SAC) for medical, hospital and pharmacy supplies.

(vii) VA Federal Supply Schedule (FSS) contracts *for supplies in Federal Supply Classification (FSC) Groups 65 and 66*; VA contracting officers are mandated to use VA NAC awarded Federal Supply Schedule (FSS) in FSC Groups 65 and 66. The contracting officer shall place orders against VA NAC awarded FSS contracts in FSC Groups 65 and 66 in the following descending order of priority:

(a) VA nationally awarded Blanket Purchase Agreements (BPAs) against VA FSS.

(b) Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against VA FSS.

(c) VA FSS contract without a BPA.

(viii) *Indefinite-delivery Indefinite-quantity (IDIQ) contracts*, awarded by VISN, regional, or local facility VA contracting officers, for FSC Groups 65 and 66 supplies and services not covered by national committed use contracts or

Federal Supply Schedules.

(ix) *GSA FSS* and pre-existing contracts, including interagency and intra-agency contracts shall be considered before awarding new contracts. (FAR Subpart 7.102 (a)(4)).

(x) *Open market purchases* (purchases not falling within any of the higher priorities in above paragraphs of this section) have the same priority as commercial sources (including educational and nonprofit institutions). See FAR Subpart 8.004.

(xi) *Eligible Beneficiaries.*

1) A contracting officer may authorize an acquisition from the Veterans Canteen Service or a commercial source when a VA healthcare official (e.g., social worker, physician) determines that personal selection of shoes, clothing, and incidentals will result in a therapeutic benefit to an eligible beneficiary.

2) The contracting officer must cite Federal Prison Industries, Inc., clearance No. 1206 in the purchase document for any purchase of dress shoes from the Veterans Canteen Service or a commercial source similar to Federal Prison Industries, Inc., Style No. 86-A.

(2) Unusual and compelling urgency. The contracting officer may use a source lower in priority than as specified in 808.002-70 when the need for supplies or services is of an unusual and compelling urgency (see FAR Subpart 6.302-2 and FAR Subpart 8.405-6).