

Date: Oct 01 2012

From: Director, Procurement Policy and Warrant Management Service (003A2A)

Subj: Class Deviation from VA Acquisition Regulation 809.405-1, Continuation of Current Contracts (VAIQ 7269171)

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

1. **Purpose:** To request your approval, in accordance with Federal Acquisition Regulation (FAR) subpart 1.404, Class Deviations, and Department of Veterans Affairs Acquisition Regulation (VAAR) subpart 801.404, Class Deviations, to issue a Class Deviation from VAAR 809.405-1, Continuation of Contracts.

2. **VAAR Sections Impacted:** VAAR subpart 809.405-1

3. **Effective Date:** Immediately.

4. **Expiration Date:** Until Rescinded.

5. **Applicability:** This deviation applies to all contracts with a firm that is deemed ineligible due to suspension or debarment.

6. **Exception:** The deviation does not apply to contracts with Veteran-owned small businesses (including service-disabled veteran-owned small businesses) that are deemed ineligible because of a sustained status protest. A separate process is being instituted for status protests. At this time, this process is currently pending publishing in the Federal Register as a final rule before issuance. Upon approval of the final rule, guidance on suspension and debarment specific to status protests will be issued.

7. **Background:**

a. **Current VAAR 809.405-1, Policy:**

The Deputy Senior Procurement Executive is responsible for determining whether to continue or discontinue a current contract when a firm is suspended or debarred.

b. **Need for Deviation from VAAR 809.405-1:**

A deviation is required to change the official responsible for determining whether to continue contracts with debarred or suspended firms from the DSPE to the HCA.

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c. New Policy:

The new policy re-delegates the authority to approve or disapprove the continuation of a current contract from the DSPE to the HCA.

8. Attachment:

- VA Class Deviation from VA Acquisition Regulation 809.405-1, Continuation of Current Contracts

9. Additional Information: Questions or comments regarding this class deviation may be directed to Ms. Eyvonne Mallett, Senior Procurement Analyst, at (202) 461-5101 or VA.Procurement.Policy@va.gov.

Sheila P. Darrell
/s/for Marilyn Harris

Attachment

Approved/~~Disapproved~~

C. Ford Heard III
/s/C. Ford Heard III
ADAS for Procurement, Policy,
Systems and Oversight

10/1/2012
Date

**Class Deviation from the VA Acquisition Regulation (VAAR)
809.405-1, Continuation of Current Contracts**

Findings

A recent Government Accountability Office (GAO) audit determined that VA's fraud prevention controls for the SDVOSB program requires further enhancements to reduce the program's vulnerability to fraud, waste, and abuse. To address the identified vulnerabilities, GAO recommended the VA take 13 actions. One of the required actions is to provide guidance to the acquisition workforce on the existing procedures to terminate contracts with ineligible veteran-owned firms.

FAR 9.405-1, Continuation of Current Contracts, provides that notwithstanding the debarment, suspension, or proposed debarment of a contractor, VA may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment. FAR 9.405-1 further explains that for contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

- (1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;
- (2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or
- (3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

VAAR 809.405-1, Continuation of Current Contracts, deviates from FAR 9.405-1 by designating the DSPE as the official responsible for making the determination to continue or discontinue current contracts with suspended or debarred firms. However, the procedures for making this determination are not provided.

In response to the GAO audit, VA is required to provide COs guidance on the procedures to terminate contracts with ineligible firms. Since each respective HCA is responsible for the internal operations of their respective contracting activity, the determination of whether to continue contracts with ineligible firms shall be delegated the HCAs.

Determination

In accordance with FAR 1.404 and VA Acquisition Regulation (VAAR) 801.404, I hereby issue a class deviation to re-delegate the authority to determine whether a current procurement shall be continued when a firm is suspended or debarred from the DSPE to the HCA.

C. Ford Heard III
/s/C. Ford Heard III
Deputy Senior Procurement Executive
Attachment

1/31/2013
Date

Class Deviation

Department of Veterans Affairs Acquisition Regulation 809.405-1, Continuation of Current Contracts

809.405-1 Continuation of current contracts.

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.

END