Department of Veterans Affairs

Memorandum

Date: September 30, 2016

From: Acting Deputy Senior Procurement Executive

Subj: VA PROCUREMENT POLICY MEMORANDUM (PPM) 2016-09 – Rescission of the 1997 Non-codified Material (Formerly the 1997 Veterans Affairs Acquisition Regulation (VAAR))

To: Head of Contracting Activities

1. **Purpose:** To inform the VA Acquisition Workforce of the rescission of the 1997 version of the VAAR and the final disposition of the 1997 non-codified material. The Federal Register Notice dated January 15, 2008 published the current VAAR. The notice indicated the non-codified portions of the VAAR (i.e. the 1997 non-codified material that does not appear in 48 CFR Chapter 8) would be identified by a series of three colons (known as ellipses). This non-codified guidance was retained for further disposition at a later date and has been rescinded.

2. **Background:** The VAAR was developed under the Department's authority to supplement the FAR as part of the Federal Acquisition Regulations System, and is codified at Chapter 8 of Title 48 of the Code of Federal Regulations. The 1997 non-codified material tagged with ellipses was retained as reference material and authorized for continued use pending further disposition. Material not identified with an ellipses was no longer authorized for use.

3. **Applicability:** This memorandum applies to all VA Contracting Personnel, which includes Contract Specialists, Contracting Officers and Heads of Contracting Activities (HCAs).

4. **Expiration:** This PPM expires once incorporated into the revised Veterans Affairs Acquisition Regulation (VAAR) or the new Veterans Affairs Acquisition Manual (VAAM) or if rescinded.

5. **Disposition instructions**:

   a. VAAR 1997 was rescinded in its entirety.
   b. Non-codified material previously identified with ellipses is no longer authorized for use.
   c. Attachment 1 is an index of 1997 non-codified material (:::) removed and replaced with the unnumbered guidance reflected in PPM Attachments 3-10.

d. Attachment 2 is an index of 1997 non-codified material removed (no replacement language).
e. Attachments 3-9 provide unnumbered guidance authorized for use as appropriate.

6. **Actions Required:** HCAs will direct all personnel to discontinue all use of or reference to the 1997 version of the VAAR. HCA's internal procedural guidance issued to support sections of the 1997 VAAR need not be disrupted or rescinded as a result of this rescission providing it is current and compliant with FAR and VAAR.

7. **Questions or Concerns:** Direct questions regarding this PPM to Procurement Policy and Warrant Management Service (003A2A) via email at vacovaproc@va.gov or (202) 632-5288.

/s/
Sheila P. Darrell

Attachments
1. Attachment 1 — Index of 1997 Non-Codified Material (:::) Removed and Replaced
2. Attachment 2 — Index of 1997 Non-Codified Material (:::) Removed - No Replacement Language
3. Attachment 3 — Administrative Matters
4. Attachment 4 — Publicizing Contract Actions
5. Attachment 5 — Acquisition Planning
6. Attachment 6 — Simplified Acquisition Procedures
7. Attachment 7 — Bonds and Insurance
8. Attachment 8 — Taxes
9. Attachment 9 — Special Procurement Controls:

Distribution:

Under Secretaries for Health, Benefits, and Memorial Affairs; Chief Facilities Management Officer, Office of Facilities Management; Heads of Contracting Activities; Directors, VHA Service Area Offices; Directors and Directors of Contracting, 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; and the Executive Director and Chief Operating Officer, VA National Acquisition Center, National Cemetery Administration

Attachment 1

:::1997 Non-Codified Material:::
Removed and Replaced with Unnumbered Guidance

Part 804

:::804.202-70	Distribution of construction contract files.
:::804:805	Retention and disposal of contract files.
:::804.872	Contract records.

Part 805

:::805.5	Paid Advertisements
:::805.502	Authority.

Part 807

:::807.105	Contents of written acquisition plans.

Part 813

:::813.4	Imprest Funds
:::813.402	General.

Part 828

:::828.202	Acceptable sureties.
:::828.202-1	Corporate sureties.
:::828.203	Options in lieu of sureties.
:::828.203-1	United States bonds or notes.
:::828.203-2	Certified or cashier's checks, bank drafts, money orders, or currency.

Part 829

:::829.302	Application of State and local taxes to the Government.

Part 870

:::870.101	Equipment not in production that is technical in nature and complex in design.
:::870.108-3	Consignment agreements.

Attachment 2
:::1997 Non-Codified Material:::
Removed – No Replacement Language

Part 801

:::801.105	Issuance.
:::801.105-1	Publication and code arrangement.
:::801.602-2	
:::801.602-75	Other requirements.

Part 804

:::804.870	Numbering contracts.
:::804.871	Purchase order register.
:::804.873	Contract file.
:::804.874	Contract working file.

Part 807

:::807.102	Policy.
:::807.103	Department head responsibilities.
:::807.170	Cutoff dates and lead times.
:::807.171	Contract action log.
:::807.172	Fourth quarter and unplanned procurements.
:::807.173	Funding.
:::807.302	General.
:::807.303	Determining availability of private commercial sources.
:::807.303-70	Determining responsibility and intent.
:::807.304-70	Determining whether or not to consider COCO and/or GOCO contract options.
:::807.304-71	Ensuring continuity of contract performance.
:::807.304-74	Determination of responsibility.
:::807.7001	Policy.
:::807.7001(a)	Definition.
:::807.7002	Consolidated procurement plans.

Part 808

:::808.001	Priorities for use of Government supply sources.
:::808.370	Utility connection and service agreements—Central Office.
:::808.370-1	Utility connection agreements.
:::808.370-2	Estimates for utility service agreements.
:::808.370-3	Contracts for utility services.
:::808.371	Utility connection and service agreements—field stations.
:::808.372	Contract negotiation.
:::808.870	Acquisition of forms, publications, and related printing.
:::808.870-1	VA binding and paper specifications.
:::808.870-2	Acquisition of forms, publications, and related supplies.
:::808.870-3	VA field facility sources of duplicating, printing, binding and other related items or services.
:::808.870-4	Procurement of items and services not described in appendix A.

Part 813

:::813.106	Competition and price reasonableness.
:::813.403	Agency responsibilities.
:::813.405	Procedures.
:::813.405-70	Written c.o.d. orders.
:::813.505-3	Standard Form 44, Purchase Order--Invoice--Voucher.

Part 815

:::815.804-2	Requiring certified cost or pricing data.
:::815.805-5	Field pricing support.
:::815.901	General.

Part 817

:::817.500	Scope of Subpart.
:::817.502	General.
:::817.503-70	Approval procedures.
:::817.602	Policy.
:::817.7001	Policy
:::817.7002	Authority.
:::817.7003	Procedure.

Part 819

:::819.202-70	Additional responsibilities.
:::819.502-2	Total set-asides.
:::819.502-70	Documentation and record of procurement request review.
:::819.502-71	Required review by the Director, Office of Small and Disadvantaged Business Utilization.
:::819.803	Selecting acquisitions for the 8(a) program.
:::819.804	Evaluation, offering, and acceptance.
:::819.870	Quarterly report of inability of Small Business Administration. regional offices to negotiate 8(a) set-asides.
:::819.7004	Waiver of the use of veteran-owned firms.
:::819.7005	Reporting requirements.

Part 822

:::822.470	Department of Labor regulations.
:::822.473	Administration and enforcement policy.
:::822.474	Payrolls and statements.
:::822.475	Investigations.
:::822.476	Suspensions and deductions of contract payments.
:::822.477	Reports.
:::822.479	Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours and Safety Standards Act.
:::822.4	APPENDIX A INVESTIGATION AND ENFORCEMENT MANUAL
:::822.4	APPENDIX B SEMIANNUAL ENFORCEMENT REPORT

Part 829

:::829.000 Scope of part.

Part 836

:::836.270 Progress payment estimates.
:::836.271 Final settlement and payment.
:::836.272 Construction procurement scheduling.
:::836.370 Offer acceptance procedure.

Part 839

:::839.7000 Scope of subpart.
:::839.7001 Policy.
:::839.7002 Management controls.
:::839.7003 ADP requisitioning procedures (requirements over $10,000 to $50,000 and not on an approved ADP plan, and all over $50,000).
:::839.7004 ADP inventory requirement.

Part 843

:::843.105 Availability of funds.
:::843.170 Preparation of contract modifications.
:::843.204 Administration.
:::843.204-70 Processing station level contract modifications.

Part 846

:::846.7001 Scope.
:::846.7002 Initiation.
:::846.7003 Reporting and processing medical materiel complaints/ quality improvement report file.
:::846.7004 Quality complaint
:::846.7004-1 Locally purchased items.
:::846.7004-3 VA and all other items.
:::846.7004-4 Procurement action pending resolution of quality complaints.
:::846.7005 New item.
:::846.7005-1 Distribution and VA National Acquisition Center action.
:::846.7006 Similar item.
:::846.7007 Emergency procedures.
:::846.7008 Program review.
:::846.7101 General.
:::846.7102 Submission of reports.

Part 870

:::870.000 Scope of part.
:::870.102 Carpeting.
:::870.104 Procurement of training.
:::870.105 Animal model study subjects.
:::870.106 Protective items.

:::870.107 Special equipment for physically handicapped employees.
:::870.108 Acquisition of equipment.
:::870.108-1 Rental in lieu of purchase.
:::870.108-2 Lease-purchase agreements.
:::870.109 Controlled substances.
:::870.110 Television receivers.
:::870.111-3 Contract clauses.

Part 872

:::872.001 Initiation.
:::872.003 Substitute items.
:::872.004 Reprints of professional articles.

ATTACHMENT 3

PART 804 — ADMINISTRATIVE MATTERS

:::804.202-70 Distribution of construction contract files.

The former language (as well as the number and title) of :::804.202-70 Distribution of construction contract files in the 1997 non-codified material is now covered by the following unnumbered guidance:

Distribution of construction contract files.

The following prescribes the distribution of signed copies of construction contracts:

(a) The original of the performance and payment bonds shall be filed in a secure location the contracting office. In addition, a copy of the original performance and payment bonds shall be filed under the appropriate tab in eCMS briefcase.

(b) The cortracting officer shall provide the contractor a signed copy of the contract.

(c) The designated Contracting Officer's Representative shall also receive a copy of the signed contract.

:::804.805 Retention and disposal of contract files.

The former language (as well as the number and title) of :::804.805 Retention and disposal of contract files in the 1997 non-codified material is now covered by the following unnumbered guidance:

Storage, handling, and disposal of contract files.

(a) Contract files will be retained and disposed of as authorized by appropriate agency record control schedules and/or as handled in eCMS. However, files for actions identified in FAR 4.805 (b) may not be destroyed earlier than allowed by the time frames indicated in that section.

(b) After contracts have been properly closed they should be processed for closure with eCMS.

ATTACHMENT 4

PART 805 — PUBLICIZING CONTRACT ACTIONS

:::Subpart 805.5 Paid Advertisements:::

:::805.502 Authority.

The former language (as well as the numbers and titles) of :::Subpart 805.5 Paid Advertisements:::/:::805.502 Authority in the 1997 non-codified material is now covered by the following unnumbered guidance:

Paid Advertisements — Authority.

Newspapers. The authority to approve the publication of paid advertisements in newspapers is vested in the head of the contracting activity (HCA). Contracting officers shall obtain written authorization in accordance with agency procedures before advertising in newspapers.

ATTACHMENT 5

PART 807 — ACQUISITION PLANNING

:::**807.105 Contents of written acquisition plans.**

The former language (as well as the number and title) of :::807.105 Contents of written acquisition plans in the 1997 non-codified material is now covered by the following unnumbered guidance:

Contents of written acquisition plans.

In accordance with FAR 7.102, the VA will perform acquisition planning and conduct market research for all acquisitions. The extent and nature of the acquisition planning documentation and the market research conducted will vary depending on complexity, urgency, estimated dollar value, etc., and as prescribed by Heads of Contracting Activities (HCAs) and internal guidance. Written acquisition plans should address those items as prescribed in FAR 7.105, as applicable, and will be accomplished for each acquisition anticipated to cost in excess of $1,000,000.

ATTACHMENT 6

PART 813 — SIMPLIFIED ACQUISITION PROCEDURES

:::Subpart 813.4 Imprest Fund:::

:::813.402 General.

The former language (as well as the numbers and titles) of :::Subpart 813.4 – Imprest Fund::: /:::813.402 General in the 1997 non-codified material is now covered by the following unnumbered guidance:

Imprest funds and third party drafts guidance.

VA strongly encourages the use of the Government-wide commercial purchase card and/or convenience checks in lieu of imprest funds and third party drafts. Additionally, convenience checks shall only be used if a vendor does not accept the Governmentwide commercial purchase card or other electronic funds transfer means (EFT) of payment. The purchase card contains internal control measures, which mitigate the risk for fraud, waste, and abuse and reduces the need for additional resources to manage multiple micro-purchase procedures

ATTACHMENT 7

PART 828 — BONDS AND INSURANCE

:::828.202 Acceptable sureties:::/:::828.202-1 Corporate sureties.

The former language (as well as the numbers and titles) of the :::828.202 Acceptable sureties:::/:::828.202-1 Corporate sureties in the 1997 non-codified material is now covered by the following unnumbered guidance:

Acceptability of corporate sureties.

The contracting officer shall ensure that corporate sureties offered for a bond in connection with the procurement of supplies or services (including construction) appear on the list of approved corporate sureties contained in the Treasury Department Circular 570, and that the amount of bond is not in excess of the underwriting limits stated in that list. The current list of Treasury authorized companies is available through the Internet at https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm. The contracting officer will further ensure that the surety remains on the Treasury Department circular approved list through the active life of the contract by reviewing all circular supplements. Interim changes are published in the Federal Register and on the internet as they occur. When an active surety is terminated and removed from the list, the contracting officer shall ensure that new bonding is secured by the contractor for the uncompleted work under the contract at no cost to the Government.

:::828.203 Options in lieu of sureties:::/:::828.203-1 United States bonds or notes.

The former language (as well as the numbers and titles) of ::: :::828.203 Options in lieu of sureties:::/:::828.203-1 United States bonds or notes in the 1997 non-codified material is now covered by the following unnumbered guidance:

Options in lieu of sureties/United States bonds or notes.

Contracting officers, with the exception of those located in the District of Columbia, receiving U.S. bonds or notes in lieu of corporate or individual sureties will forward such bonds and notes to the agent cashier for safekeeping. Contracting officers in the District of Columbia will deposit such bonds and notes with the Treasurer of the United States.

:::828.203-2 Certified or cashier's checks, bank drafts, money orders, or currency.

The former language (as well as the number and title) of :::828.203-2 Certified or cashier's checks, bank drafts, money orders, or currency::: in the 1997 non-codified material is now covered by the following unnumbered guidance:

ATTACHMENT 8

PART 829 — TAXES

:::829.302 Application of State and local taxes to the Government.

The former language (as well as the number and title) of :::829 Application of State and local taxes to the Government in the 1997 non-codified material is now covered by the following unnumbered guidance:

Application of State and local taxes to the Government.

(a) If a vendor refuses to sell at a price exclusive of the State and local tax, the contracting officer must use Standard Form (SF) 1094, U.S. Tax Exemption Certificate, as a basis for notifying taxing authorities for a refund of taxes paid.

(b) A contracting officer may not furnish an SF 1094 to a vendor or use SF 1094 to claim reimbursement from the taxing authority when the total amount of State and local tax on any one purchase is $15 or less.

ATTACHMENT 9

PART 870 — SPECIAL PROCUREMENT CONTROLS

:::870.101 Equipment not in production that is technical in nature and complex in design.

The former language (as well as the number and title) of :::870.101 in the 1997 non-codified material is now covered by the following unnumbered guidance:

Equipment not in production that is technical in nature and complex in design.

(a) Except as provided in this section, technical equipment of complex design that is not in commercial production or which, if in production must be modified to meet a specific performance specification, will not be purchased in quantity. The initial purchase will be limited to that quantity determined by the department head or staff office director concerned to be necessary to properly test and evaluate the equipment. This determination will be in writing with the original will be filed in the contract file. The authority to make this determination will not be redelegated. Contracts covering the initial procurement will reserve to the contracting officer the right to approve any subcontractor the prime contractor proposes to use.

(b) During the evaluation period, the contracting officer will be furnished the product evaluation reports. The contracting officer will, in addition thereto, be furnished such other information as may be necessary to enable him/her to properly administer the contract and to protect the rights of the VA.

(c) Equipment of this nature will be approved for quantity purchase by the department head or staff office director, only after it has been thoroughly tested at one or more Department of Veterans Affairs installations, or by another Federal agency or nationally recognized testing laboratory. When tests are not conducted by the Department of Veterans Affairs, the testing agency's reports will be reviewed and evaluated in accordance with HCA local procedures prior to approval of a quantity purchase. When approved for purchase, the procurement will, if possible, be assigned to the contracting officer who made the initial purchase. If this is not feasible, the contracting officer to whom the procurement is assigned will secure from the original contracting officer all pertinent information necessary to execute the contract.

:::870.108-3 Consignment agreements.

The former language (as well as the number and title) of :::870.108-3 Consignment agreements in the 1997 non-codified material is now covered by the following unnumbered guidance:

Consignment agreements.

(a) Consignment agreement is defined as an agreement for a specified period of time under which a vendor provides an item to the Department of Veterans Affairs, reimbursement for which is made only if and when use of the item is made by the Department of Veteran Affairs. Unused items are returned to the vendor at the end of the effective period of the agreement without reimbursement or other expense to the Government.

(b) Procurement by consignment agreement may be considered in those instances where the requirement for an item is immediate and it is not possible to predetermine which of several types or models are required (i.e., intraocular lenses, surgically implanted prostheses, etc.) and having each type or model in house on a consignment basis will assure instant availability to the user.

(c) Acquisition by consignment agreement will be made only when this method is determined to be in the best interest of the Department of Veterans Affairs. Each determination will be in writing, signed by the Head of the Contracting Activity, and made a part of the contract file.

(d) Purchase requests for consignment agreements shall be fully justified and approved by the facility Director prior to taking any contractual action. For each agreement, the Contracting Officer or duly appointed Contracting Officer's Representative must establish and maintain an accountability file showing all transactions and the total value of property on consignment at all times. As a minimum, the accountability file will reflect:

(1) Date of receipt of property,

(2) Ownership of property,

(3) Description of property,

(4) Quantity,

(5) Value of property,

(6) Agreement number,

(7) Record of orders placed for property used during agreement period, and

(8) Acknowledgment of receipt of unused property returned to owner.

(e) For the purpose of obtaining the approval required by paragraph (c), initial requests to establish consignment agreements will be routed to the Director of the servicing contracting office who will forward the request, together recommendations, to the appropriate Director of the facility for approval.

(f) When soliciting offers, contracting officers will consider, in addition to other applicable clauses and conditions, the following:

(1) Solicitations will specify the period of time over which the consignment agreement will be in effect and whether the agreement will be cancelable by the Government during that period.

(2) Offerors will be required to specify the price at which the item(s) will be sold to the Government should the item(s) be required for use by the Government at any time during the effective period of the agreement.

(3) Solicitations will specify that the Government assumes no liability for any item(s) assigned to the Department of Veterans Affairs on a consignment basis until such time as a requirement for the item exists and a delivery order is placed against the agreement. (4) In addition to the requirements of this section, consignment agreements will be established utilizing the same process as any other indefinite quantity contract.

(i) Purchase requests will be initiated and forwarded to the contracting officer within 1 administrative workday of actual use of property consigned to the Department of Veterans Affairs.