



# VA Acquisition Regulation Update

June 12, 2019

Number 2008-14

1. **Material Transmitted:** The attached pages contain interim revisions issued via an approved Class Deviation from the Department of Veterans Affairs Acquisition Regulation (VAAR) part 808.
2. **Summary of Changes:** This VAAR Update provides text revisions based on an active VAAR Class Deviation issued on May 20, 2019 and effective until rescinded or incorporated into the official eCFR revised VAAR.

The changes are listed and summarized below:

**2008 VAAR Active Class Deviation May 20, 2019**

CD Title & Date/Change	Effective Date	VAAR Parts Affected	Summary of Change(s)
<p>Class Deviation from VAAR 808.002, Priorities for Use of Government Supply Sources and VAAR Subpart 808.6, Acquisition from Federal Prison Industries, Inc.</p> <p align="center">May 20, 2019</p>	<p align="center">May 20, 2019</p>	<p align="center">808.002 808.6</p>	<p>This Class Deviation reflects language consistent with the decision of the United States Court of Appeals for the Federal Circuit in <i>PDS Consultants, Inc., v. The United States, Winston-Salem Industries for the Blind</i>, issued October 17, 2018 that the Veterans First Contracting Program takes precedence over AbilityOne and Federal Prison Industries.</p>

**3. Filing Instructions:**

Remove pages:	Insert Pages:
808-1 thru 808-8	808-1 thru 808-10

**Effective date:** May 20, 2019.

**SUBCHAPTER B—ACQUISITION PLANNING**

**PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

Sec.

- 808.002 Priorities for use of mandatory Government supply sources.
- 808.004-70 Use of non-mandatory sources by VA.

**Subpart 808.4 – Federal Supply Schedules**

- 808.402 General.
- 808.404-70 Use of Federal Supply Schedules—the Veterans First Contracting Program.
- 808.405-2 Ordering procedure for services requiring a statement of work.
- 808.405-70 VA Rule of Two ordering procedures for Federal Supply Schedules—the Veterans First Contracting Program.
- 808.405-5-70 Small business set-asides—the Veterans First Contracting Program.

**Subpart 808.6 – Acquisition from Federal Prison Industries, Inc. (FPI)**

- 808.603 Purchase priorities

**Subpart 808.8 – Acquisition of Printing and Related Supplies**

- 808.802 Policy.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

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[Deviation per Class Deviation—[Veterans First Contracting Program](#) (VFCP 2016) dated July 25, 2016, Attachment 4, rescinds class deviation—VAAR part 808 dated May 5, 2016, and deviates from the existing eCFR VAAR. It moves VA mandatory contract vehicles to VAAR 808.004-70 as non-mandatory, while retaining priority over other existing contract vehicles. This class deviation also adds VAAR 808.002, 808.004-70, 808.404-70, 808.405-2 and 808.405-70 to fully implement the VFCP as it relates to VAAR part 808, Required Sources of Supplies and Services including the Federal Supply Schedules (see Attachment 4). This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per [Class Deviation](#) from VAAR 808.002, Priorities for Use of Government Supply Sources and VAAR Subpart 808.6, Acquisition from Federal Prison Industries, dated May 20, 2019, supersedes Class Deviation from VAAR 808.002, Priorities for Use of mandatory Government sources, dated February 9, 2018, and revises VAAR 808.002 to reflect language consistent with the decision of United States Court of Appeals for the Federal Circuit in *PDS Consultants, Inc., v. The United States, Winston-Salem Industries for the Blind*, issued October 17, 2018 and mandated on May 20, 2019. The mandate issued by the Federal Circuit created a binding circuit precedent that, when a product or service is on the AbilityOne Procurement List and ordinarily would result in award under the JWOD program, the Act instead unambiguously requires that priority be given to Veteran-owned small businesses. VAAR 808.603 is also revised. Though the Federal Prison Industries (FPI) priority for use of mandatory Government sources set forth at [FAR 8.002\(a\)\(iii\)](#) and [FAR subpart 8.6](#) was not specifically at issue in the Federal Circuit case, the application of the rationale in the cited case would logically apply to FPI in relation to the Act. For supplies, FPI is a higher priority than the AbilityOne (JWOD) priority at [FAR 8.002\(a\)\(iv\)](#) and [FAR subpart 8.7](#). VA previously amended the VAAR to allow the agency the discretion to award to a veteran-owned small business when award otherwise would have been made to FPI.]

### **808.002 Priorities for use of mandatory Government sources.**

(a) Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources 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 (see [FAR subpart 8.1](#)).

(iii) Federal Prison Industries, Inc. (see VAAR 808.603). Prior to considering award of a contract to Federal Prison Industries, Inc, contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified service-disabled veteran-owned small business (SDVOSB)/veteran-owned small business (VOSB) as provided in subpart 819.70, FPI remains a mandatory source in accordance with [FAR 8.002](#).

(iv) *Supplies that are on the Procurement List* maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne ([FAR subpart 8.7](#)). Prior to considering award of a contract to under the AbilityOne program, contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified SDVOSB/VOSB as provided in subpart 819.70, AbilityOne remains a mandatory source in accordance with [FAR 8.002](#). All new VA requirements must be approved by the Chief Acquisition Officer, via the Senior Procurement Executive, before contacting the Committee to request addition of new items to the Procurement List.

(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), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points.

(2) *Services that are on the Procurement List* maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne ([FAR subpart 8.7](#)). Prior to considering award of a contract under the AbilityOne program, contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified SDVOSB/VOSB as provided in subpart 819.70, AbilityOne remains a mandatory source in accordance with [FAR 8.002](#). All new VA requirements must be approved by the Chief Acquisition Officer, via the Senior Procurement Executive, before contacting the Committee to request addition of new items to the Procurement List.

(b) *Unusual and compelling urgency*. The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see [FAR 6.302-2](#), [8.405-6](#) and [13.106-1](#) for justification requirements).

**808.004-70 Use of non-mandatory sources by VA.**

(a) In order to fulfill the requirements of 38 U.S.C. 8127 and 8128 (see subpart 819.70), contracting officers shall award contracts (see [FAR 2.101](#) for the definition of contracts), including Blanket Purchase Agreements (BPAs) and orders against Federal Supply Schedules (FSS) and provide priority in the awarding of contracts to verified SDVOSBs or VOSBs. Contracting officers shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70.

(b) *VA strategic sourcing priorities and application of the VA Rule of Two.* To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (prime-vendor and VA FSS). Contracting officers shall consider the prime-vendor and VA FSS contract vehicles before using other existing contract vehicles.

(c) When considering set-asides for verified SDVOSBs/VOSBs against existing contract vehicles, contracting officers shall—

(1) Search the VIP database by applicable North American Industry Classification System (NAICS) code(s);

(2) Determine if two or more verified SDVOSBs/VOSBs are listed by the NAICS code(s);

(3) Determine if identified SDVOSBs or VOSBs are capable of performing the work and likely to submit an offer/quote at a fair and reasonable price that offers best value to the Government.

(4) If criteria in (c)(1-3) are met, and if the existing contract vehicle represents, in the judgement of the contracting officer, the best business choice, the contracting officer shall set aside the requirement in the contracting order of priority (see 819.7005 and 819.7006) using the applicable provision and clause at 819.7009.

(5) If the contracting officer determines existing contract vehicles are not suitable for award of a set-aside, an open market set-aside should be pursued.

**SUBPART 808.4 – FEDERAL SUPPLY SCHEDULES****808.402 General.**

The Executive Director and Chief Operating Officer, VA National Acquisition

Center, advertises, negotiates, awards, administers, and issues the Federal Supply Schedules for Federal Supply Classification Groups 62, 65, and 89 and for cost-per-test services under Group 66.

[[Deviation per Class Deviation—Veterans First Contracting Program \(VFCP 2016\)](#), dated July 25, 2016, rescinds class deviation—VAAR part 808 dated May 5, 2016 and moves VA mandatory contract vehicles to VAAR 808.004-70 as non-mandatory, while retaining priority over other existing contract vehicles. This class deviation adds VAAR 808.002, 808.004-70, 808.404-70, 808.405-2, 808.405-70 and 808.405-5-70 to fully implement the Veterans First Contracting Program as it relates to VAAR part 808, Required Sources of Supplies and Services, including the Federal Supply Schedules. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

### **808.404-70 Use of Federal Supply Schedules—the Veterans First Contracting Program.**

(a) General. The Veterans First Contracting Program implemented in subpart 819.70 pursuant to 38 U.S.C 8127 and 8128 applies to VA contracts, BPAs, and orders under [FAR 8.4](#) and has precedence over other small business programs.

(b)(1) Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer will consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities will be followed by preferences for other small businesses in accordance with [FAR 19.203](#), 819.203-70 and 819.7004.

(2) Set-asides for verified SDVOSBs and VOSBs are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more offers at a fair and reasonable price that offers best value to the Government. This mandate applies to contracting officers issuing BPAs and placing orders against the FSS. Because only verified SDVOSBs and VOSBs can participate on such set-asides, the contracting officer should start by reviewing verified firms in the VIP database, then determine if there is an existing contract vehicle (with priority preference for VA prime-vendor, national and VA FSS contracts) that is most appropriate. The VA Rule of Two for SDVOSBs and VOSBs, in that order, shall be applied in all instances. A set-aside restricted to verified SDVOSBs or VOSBs under 819.70 satisfies the competition requirement in the FAR.

(c) When the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with [FAR subpart 17.5](#) and subpart 817.5 and includes terms requiring compliance with the VA Rule of Two (see 817.501).

### **808.405-2 Ordering procedures for services requiring a statement of work.**



See 808.405-70 for SDVOSB/VOSB set-aside requirements and the use of evaluation preferences when a set aside is not feasible.

**808.405-70 VA Rule of Two ordering procedures for Federal Supply Schedules—the Veterans First Contracting Program.**

Contracting officers shall use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services. When a policy in another part of the FAR is inconsistent with a policy in this part and [FAR 8.405](#), this subpart 808.4 shall take precedence for acquisitions against the FSS.

(a) Pursuant to 38 U.S.C. 8127, contracting activities shall set aside BPAs and orders for SDVOSBs or VOSBs when indicated by market research. The set-aside authorities of 819.7005 and 819.7006 are mandatory whenever the contracting officer has a reasonable expectation of receiving two or more competitive offers/quotes at fair and reasonable prices that offer best value to the Government from SDVOSBs or VOSBs listed as verified in the VIP database.

(1) When setting aside BPAs and orders against the FSS, the eligibility requirements of 819.7003, 819.7005, and 819.7006 apply, including the requirement for offerors to be verified to submit offers/quotes or receive awards. To ensure fair and reasonable prices that offer best value to the Government and compliance with other requirements, the contracting officer shall—

(i) Notify potential offerors of the unique VA verification requirements by including the applicable set-aside clause prescribed at 819.7009.

(ii) Post the RFQ on e-Buy to afford all verified SDVOSB or VOSB schedule contractors, depending on the set-aside, offering the required supplies or services under the appropriate multiple award schedule(s) an opportunity to submit a quote; or

(iii) Provide the RFQ to as many verified SDVOSB or VOSB schedule contractors as practicable, depending on the set-aside, consistent with market research appropriate to the circumstances. The requirements in [FAR 8.405-1](#), [8.405-2](#) and [8.405-3](#), apply, except only verified SDVOSBs or VOSBs, will be considered.

(b) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting activity shall give priority to SDVOSBs/VOSBs through the use of evaluation preferences, as provided in 815.304. The contracting activity, when developing a statement of work and any evaluation criteria in addition to price, shall adhere to and apply the evaluation factor commitments at 815.304-70.

(c) The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including verification of the SDVOSB and VOSB status at the time of submission of offer/quote and prior to award. The offeror must also represent that it meets the small business size standard for the assigned NAICS and other small business requirements (e.g. non-manufacturer rule and limitations on subcontracting).

### **808.405-5-70 Small business set-asides—the Veterans First Contracting Program.**

When issuing BPAs or placing orders against the FSS, the contracting officer shall restrict competition to small businesses owned and controlled by veterans, when market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from verified SDVOSBs or VOSBs and award can be made at a fair and reasonable price that offers best value to the Government.

### **SUBPART 808.6 – ACQUISITIONS FROM FEDERAL PRISON INDUSTRIES, INC. (FPI)**

[Deviation per [Class Deviation](#) from VAAR 808.002, Priorities for Use of Government Supply Sources and VAAR Subpart 808.6, Acquisition from Federal Prison Industries, dated May 20, 2019, supersedes Class Deviation from VAAR 808.002, Priorities for Use of mandatory Government sources, dated February 9, 2018, and revises VAAR 808.002 to reflect language consistent with the decision of United States Court of Appeals for the Federal Circuit in *PDS Consultants, Inc., v. The United States, Winston-Salem Industries for the Blind*, issued October 17, 2018 and mandated on May 20, 2019. The mandate issued by the Federal Circuit created a binding circuit precedent that, when a product or service is on the AbilityOne Procurement List and ordinarily would result in award under the JWOD program, the Act instead unambiguously requires that priority be given to Veteran-owned small businesses. VAAR 808.603 is also revised. Though the Federal Prison Industries (FPI) priority for use of mandatory Government sources set forth at [FAR 8.002\(a\)\(iii\)](#) and [FAR subpart 8.6](#) was not specifically at issue in the Federal Circuit case, the application of the rationale in the cited case would logically apply to FPI in relation to the Act. For supplies, FPI is a higher priority than the AbilityOne (JWOD) priority at [FAR 8.002\(a\)\(iv\)](#) and [FAR subpart 8.7](#). VA previously amended the VAAR to allow the agency the discretion to award to a veteran-owned small business when award otherwise would have been made to FPI.]

**808.603 Purchase priorities.**

A waiver from FPI is not needed when comparable supplies and services are procured in accordance with 819.70.

**SUBPART 808.8 – ACQUISITION OF PRINTING AND RELATED SUPPLIES**

**808.802 Policy.**

The Director, Publications Staff, Office of Acquisition and Materiel Management, VA Central Office, is the Central Printing Authority for VA (see [FAR 8.802\(b\)](#)).

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