



VA Acquisition Regulation Update

Sept 16, 2020

Number 2008-24

1. **Material Transmitted:** The attached pages contain interim revisions issued via approved class deviations to the Department of Veterans Affairs Acquisition Regulation (VAAR) parts 808 and 832.
2. **Summary of Changes:** This VAAR update provides text revisions based on active VAAR class deviations issued from March 27, 2020 through August 14, 2020, and active until incorporated into the VAAR, or the VA Acquisition Manual (VAAM), or otherwise rescinded.

The changes are listed and summarized below:

2008 VAAR Active Class Deviation through August 14, 2020			
CD Title & Date/Change	Effective Date	VAAR Parts Affected	Summary of Change(s)
Class Deviation from the Federal Acquisition Regulation and VA Acquisition Regulation to Provide for Accelerated Payments to Small Business	August 07, 2020	832.904-70	Due to the FAR deviation, VAAR 832.904-70 is removed as redundant. This deviation expires when incorporated into the FAR and VAAR.

Contractors and Subcontractors			
Class Deviation from the VA Acquisition Regulation 808.002, Priorities for Use of Mandatory Government Sources	August 14, 2020	808.002	This class deviation implements legislative amendments to VA's Veteran's First Contracting Program to provide an exception to small business contracting requirements applicable to the VA's procurement of certain goods and services covered under the AbilityOne program. This deviation expires when incorporated into the VAAR or superseded.

3. Filing Instructions:

Remove pages:	Insert Pages:
808-1 thru 808-8	808-1 thru 808-12
832-1 thru 832-8	832-1 thru 832-8

Effective date: As depicted in the Summary of Changes table.

SUBCHAPTER B—COMPETITION AND 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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SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

[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.]

[Deviation per [Class Deviation](#) from [VAAR 808.002](#), Priorities for Use of Mandatory Government Sources, dated August 14, 2020, which partially supersedes Class Deviation from VAAR 808.002, Priorities for Use of Government Supply Sources and VAAR Subpart 808.6, Acquisition from Federal Prison Industries, Inc., dated May 20, 2019, by revising [VAAR 808.002](#) to reflect language consistent with Public Law 116-155, the Department of Veterans Affairs Contracting Preference Consistency Act of 2020 (H.R. 4290), amending 38 U.S.C. 8127, enacted and effective on August 8, 2020. The new legislation requires a contracting officer of the Department to procure covered products and services on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), through the AbilityOne Program, as a priority mandatory Government source. The legislation also provides an exception when a covered

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product or service was procured from an eligible Service-Disabled Veteran- Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) as a result of a VA Rule of Two determination between the period after December 22, 2006 and the day before the date of enactment of the Act, August 07, 2020. In such a case, the covered product or service shall continue to be procured under VA's SDVOSB/VOSB set-aside program, provided two or more SDVOSBs/VOSBs are expected to provide the same or similar product at a fair and reasonable price, that offers the best value to the United States. In the event that a contract for any covered product or service previously awarded under the VFCP is terminated or expires, before it can be procured under the AbilityOne Program, the Head of the Contracting Activity or designee is required to make a determination that a reasonable expectation no longer exists that two or more SDVOSBs/VOSBs will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. The legislation provides a definition of covered products and services, and certain exceptions which the VA is implementing through this class deviation. This deviation expires when incorporated into the VAAR or superseded.]

808.002 Priorities for use of mandatory Government sources. [DEVIATION AUG 2020]

(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 subpart [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) Covered products that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, through the AbilityOne Program ([FAR subpart 8.7](#)).

(A) *Definition.* As used in this paragraph—

Covered product means a product that—

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(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see [FAR 8.703](#)); and

(2) Was included on the Procurement List on or before December 22, 2006; or

(3) Is a replacement for a product under this paragraph;

(4) Is essentially the same and meeting the same requirement as the product being replaced; and

(5) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) *Policy.* Contracting officers shall procure a covered product that is on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7.

(C) *Exceptions for covered products previously awarded to SDVOSBs/VOSBs.* If a contract for a covered product was previously awarded to a VIP-listed SDVOSB or VOSB after December 22, 2006 and in effect August 07, 2020, the requirement shall continue to be procured as a SDVOSB/VOSB set-aside provided—

(1) The contracting officer makes a determination that two or more VIP-listed SDVOSBs or VOSBs will submit offers for the same or similar product, in accordance with 38 U.S.C. 8127 and subpart [819.70](#); and

(2) The award can be made at a fair and reasonable price that offers the best value to the United States.

(D) *Restoring AbilityOne as a priority mandatory source for covered products on the Procurement List on certain previously awarded SDVOSB/VOSB contracts.* In the event of contract termination or expiration of a contract previously awarded as set forth in paragraph (a)(1)(iv)(C), AbilityOne remains a priority mandatory Government source, provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more SDVOSBs/VOSBs will submit offers; and

(2) Award can be made at a fair and reasonable price that offers best value to the United States.

(2) *Services.* Covered services that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, through the AbilityOne Program ([FAR subpart 8.7](#)).

(i) *Definition.* As used in this paragraph—

Covered service means a service that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see [FAR 8.703](#)); and

(2) Was included on the Procurement List on or before December 22, 2006; or

(3) Is a replacement for a service under this paragraph;

(4) Is essentially the same and meeting the same requirement as the service being replaced; and

(5) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7.

(iii) *Exceptions for covered services previously awarded to SDVOSBs/VOSBs.* If a contract for a covered service was previously awarded to a VIP-listed SDVOSB or VOSB after December 22, 2006 and in effect August 07, 2020, the requirement shall continue to be procured as a SDVOSB/VOSB set-aside provided—

(A) The contracting officer makes a determination that two or more VIP-listed SDVOSBs or VOSBs will submit offers for the same or similar services, in accordance with 38 U.S.C. 8127 and subpart [819.70](#); and

(B) The award can be made at a fair and reasonable price that offers the best value to the United States.

(iv) *Restoring AbilityOne program as a priority mandatory Government source for covered services on the Procurement List on certain previously awarded SDVOSB/VOSB contracts.* In the event of contract termination or expiration of a contract previously awarded to SDVOSBs or VOSBs as set forth in paragraph (a)(2)(iii), AbilityOne remains a priority mandatory Government source, provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(A) Two or more SDVOSBs/VOSBs will submit offers; and

(B) Award can be made at a fair and reasonable price that offers best value to the United States.

(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

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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

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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, 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.]

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.

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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

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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 subpart [819.70](#).

SUBPART 808.8 – ACQUISITION OF PRINTING AND RELATED SUPPLIES

808.802 Policy.

The Director, Publications Staff, Office of Acquisition and Materiel

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Management, VA Central Office, is the Central Printing Authority for VA (see [FAR 8.802\(b\)](#)).

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 832—CONTRACT FINANCING

(Revised 10/31/18)

Sec.

- 832.001 Definitions.
- 832.006 Reduction or suspension of contract payments upon finding fraud.
- 832.006-1 General.
- 832.006-4 Procedures.

Subpart 832.1—Non-Commercial Item Purchase Financing

- 832.111 Contract clauses for non-commercial purchases.
- 832.111-70 VA Contract clauses for non-commercial purchases.

Subpart 832.2—Commercial Item Purchase Financing

- 832.202 General.
- 832.202-1 Policy.
- 832.202-4 Security for Government financing.

Subpart 832.4—Advance Payments for Non-Commercial Items

- 832.402 General.
- 832.404 Exclusions.

Subpart 832.5—[RESERVED]

Subpart 832.8—[RESERVED]

Subpart 832.9—[RESERVED]

Subpart 832.11—[RESERVED]

Subpart 832.70—Electronic Invoicing Requirements

- 832.7000 General.
- 832.7001 Electronic payment requests.
- 832.7001-1 Data transmission.
- 832.7001-2 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304

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PART 832—CONTRACT FINANCING**832.001 Definitions.**

As used in this part:

(a) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment.

(b) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in 832.7001-1. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(c) *Payment request* means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

832.006 Reduction or suspension of contract payments upon finding of fraud.**832.006-1 General.**

(b) The Senior Procurement Executive (SPE) is authorized to make determinations that there is substantial evidence that contractors' requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in [FAR 32.006](#).

832.006-4 Procedures.

(b) The Remedy Coordination Official (RCO) for VA is the Deputy Senior Procurement Executive (DSPE) who shall carry out the responsibilities of the agency head in [FAR 32.006-4\(b\)](#).

(e) The RCO shall carry out the responsibilities of the agency head in [FAR 32.006-4\(e\)](#) to notify the contractor of the reasons for the recommended action and of its right to submit information within a reasonable period of time in response to the proposed action under [FAR 32.006](#).

(1) The notice of proposed action will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the RCO to present information or argument in person or through a representative and may supplement the oral presentation with

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written information and argument.

(2) The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the RCO does not receive a reply from the contractor within 30 calendar days, the RCO will base his or her recommendations on the information available. Any recommendation of the RCO under [FAR 31.006-4\(a\)](#) and paragraph (b) of this section, must address the results of this notification and the information, if any, provided by the contractor. After reviewing all the information, the RCO shall make a recommendation to the SPE whether or not substantial evidence of fraud exists.

(g) In addition to following the procedures in [FAR 32.006-4](#), the SPE shall provide a copy of each final determination and the supporting documentation to the contractor, the RCO, the contracting officer, and the Office of the Inspector General (OIG). The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

832.111-70 VA contract clauses for non-commercial purchases.

(a)(1) Insert the clause at [852.232-70](#), Payments Under Fixed-Price Construction Contracts (Without NAS-CPM) in solicitations and contracts that contain the FAR clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract does not require use of the “Network Analysis System—Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b)(1) Insert the clause at [852.232-71](#), Payments Under Fixed-Price Construction Contracts (Including NAS-CPM), in solicitations and contracts that contain the FAR clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract requires use of the “Network Analysis System—Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

Subpart 832.2—Commercial Item Purchase Financing

832.202 General.

832.202-1 Policy.

(d) HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts for commercial items with unusual contract financing or with commercial interim or advance payments approved for the previous fiscal year. The report shall include the contract number and amount, the amount of the unusual contract financing or with commercial interim or advance payments approved, and the kind and amount of security obtained for the advance.

832.202-4 Security for Government financing.

(a)(2) An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information—

(i) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm;

(ii) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash within the firm or branch performing the contract;

(iii) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial risk, and credit arrangements;

(iv) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions;

(v) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business; and

(vi) Any other financial information deemed necessary.

Subpart 832.4—Advance Payments for Non-Commercial Items

832.402 General.

(c)(1)(iii) The authority to make the determination required by [FAR 32.402\(c\)\(1\)\(iii\)](#) and to approve contract terms is delegated to the head of the contracting activity (HCA). The request for approval shall include the information required by [FAR 32.409-1](#) and shall address the standards for advance payment in [FAR 32.402\(c\)\(2\)](#). HCAs

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shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on number of contracts for non-commercial items with advance payments approved in the previous fiscal year. The report shall include the contract number and amount, the amount of the advance payment, and the kind and amount of security obtained for the advance.

832.404 Exclusions.

(b)(1) As permitted by 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term “other publications” includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(2) As permitted by 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(3) As permitted by 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees, including obtaining professional credentials under 5 U.S.C. 5757, in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

Subpart 832.5—[RESERVED]**Subpart 832.8—[RESERVED]****Subpart 832.9—[RESERVED] [DEVIATION AUG 2020]****Subpart 832.11—[RESERVED]****Subpart 832.70—Electronic Invoicing Requirements****832.7000 General.**

This subpart prescribes policy requirements for submitting and processing payment requests in electronic form.

832.7001 Electronic payment requests.

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by

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mail, through the United States Postal Service, to the designated agency office for—

- (1) Awards made to foreign vendors for work performed outside the United States;
- (2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;
- (3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;
- (4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or
- (5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.7001-1 Data transmission.

The contractor shall submit electronic payment requests through—

- (a) VA's Electronic Invoice Presentment and Payment System at the current website address provided in the contract; or
- (b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI).

832.7001-2 Contract clause.

The contracting officer shall insert the clause at [852.232-72](#), Electronic Submission of Payment Requests, in solicitations and contracts exceeding the micro-purchase threshold, except those for which the contracting officer has directed otherwise under 832.7001, and those paid with a Governmentwide commercial purchase card.

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