

finds that consumer-driven call blocking is an enhancement of service, not a discontinuance or impairment of “service” to a “community,” or part of a community,” within the meaning of section 214(a) of the Act. In any event, because the Commission’s discussion in the *2015 TCPA Order* focusing on opt-in call blocking programs created uncertainty as to the call-blocking tools that voice service providers can offer their customers, the Commission is expressly authorized to issue a declaratory ruling here to clarify that voice service providers’ long-recognized ability to block unlawful calls encompasses the right to block calls where the customer chooses on an informed opt-out basis. In short, as stated above, the Commission finds that opt-out call-blocking programs are generally just and reasonable practices (not unjust and unreasonable practices) under section 201 of the Act and enhancements of service (not impairments of service) under section 214 of the Act.

Reports on Deployment and Implementation of Call Blocking and Caller ID Authentication

19. In order to measure the effectiveness of efforts of the Commission and industry to thwart illegal robocalls and empower consumers, the Commission directs CGB, in consultation with WCB and PSHSB, to prepare two reports on the state of deployment of advanced methods and tools to eliminate such calls, including the impact of call blocking on 911 and public safety. The reports shall be submitted to the Commission no later than June 23, 2020, for the first report, and no later than June 23, 2021, for the second report.

20. Specifically, the Commission adopts the recommendation of its Consumer Advisory Committee dated September 18, 2017, to study the implementation and effectiveness of blocking measures, to include:

[T]he availability to consumers of call blocking solutions; the fees charged, if any, for call blocking tools available to consumers; the proportion of subscribers whose providers offer and/or enable call blocking tools; the effectiveness of various categories of call blocking tools; and an assessment of the number of subscribers availing themselves of available call blocking tools.

21. The Commission recognizes that to determine the “effectiveness of various categories of call blocking tools,” as the Consumer Advisory Committee recommended, it may be necessary for CGB to collect additional

information and data from voice service providers. The Commission explicitly delegates authority to CGB, in consultation with WCB and PSHSB, to collect any and all relevant information and data from voice service providers necessary to complete these reports. Following delivery of the first report, the Commission will assess whether, contrary to expectation, consumers are being charged and, if so, the Commission will seek comment on rules requiring providers that offer these services to do so for free.

Ordering Clause

22. Pursuant to sections 4(i), 4(j), 201, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 214, and §§ 1.2 and 64.1200 of the Commission’s rules, 47 CFR 1.2, 64.1200, the *Declaratory Ruling* in CG Docket No. 17–59 is adopted.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 808

[Docket VA–2019–VACO–0018]

Issuance of Class Deviation From VA Acquisition Regulation (VAAR) Part 808—Required Sources of Supplies and Services and Conforming Amendments

AGENCY: Department of Veterans Affairs (VA).

ACTION: Temporary rule; request for comments.

SUMMARY: VA provides notification that the agency has issued a class deviation from VA Acquisition Regulation (VAAR) Part 808—Required Sources of Supplies and Services. VA is amending the VAAR to implement the Federal Circuit’s mandate. VA has determined that publication of this notification in the *Federal Register* would be beneficial to both the agency’s acquisition workforce and industry stakeholders. The class deviation, which is effective May 20, 2019, was issued to immediately implement the Federal Circuit’s mandate, and this publication is to further notify the public in order to avoid confusion regarding applicable policy and to make conforming amendments to the CFR. The public is invited to submit comments on VA’s approach to implementing the Federal

Circuit mandate, as set forth in the class deviation and the conforming amendments to the CFR set forth in this publication.

DATES: The rule is effective June 24, 2019 through July 1, 2021. The class deviation is effective as of May 20, 2019. Comments: Interested parties are invited to submit comments in writing by July 24, 2019.

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington DC 20420; or by fax to 202–273–9026. Comments should indicate that they are submitted in response to Docket #VA–2019–VACO–0018, titled—“Issuance of Class Deviation from VA Acquisition Regulation (VAAR) Part 808 — Required Sources of Supplies and Services.” During the comment period, comments may also be viewed online through the Federal Docket Management System at www.regulations.gov. The full class deviation text is available at: <https://www.va.gov/oal/docs/business/pps/deviationVaar20190520.PDF>.

FOR FURTHER INFORMATION CONTACT: Sheila P. Darrell, Ph.D., CFCM, Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A) via email at VA.Procurement.Policy@va.gov or (202) 632–5288. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 17, 2018, the Federal Circuit, which has nationwide appellate jurisdiction over challenges to federal agency procurement decisions, issued a decision in *PDS Consultants, Inc., v. The United States, Winston-Salem Industries for the Blind* (PDS Consultants), 907 F.3d 1345 (Fed. Cir. 2018). In the decision, the Federal Circuit noted that in 2016 the United States Supreme Court, in its decision in *Kingdomware Technologies, Inc. v. United States*, held that, “[e]xcept when the [VA] uses the noncompetitive and sole-source contracting procedures in subsections (b) and (c), § 8127(d) requires the [VA] to use the Rule of Two before awarding a contract to another supplier.” However, the Federal Circuit acknowledged that *Kingdomware* did not directly address the interaction between 38 U.S.C. 8127 and the Javits-Wagner O’Day Act (JWOD), 41 U.S.C. 8504, and, instead focused on whether VA had the discretion to place orders under a preexisting Federal Supply

Schedule before resorting to the Rule of Two.

The Federal Circuit further found that, under 38 U.S.C. 8128(a), the Secretary of Veterans Affairs, when “procuring goods and services pursuant to a contracting preference under [title 38] or any other provision of law . . . shall give priority to a small business concern owned and controlled by veterans, if such business concern meets the requirements of that contracting preference.” (emphasis added). The Federal Circuit found that the phrase “or any other provision of law” by its terms encompasses the JWOD. Therefore, the Federal Circuit found that where a product or service is on the Procurement List and ordinarily would result in the contract being awarded to a nonprofit qualified under the JWOD, 38 U.S.C. 8127(d) would require VA to apply the VA Rule of Two before awarding a contract to a qualified nonprofit organization.

VA provides notice that the agency has issued a class deviation from VA Acquisition Regulation (VAAR) Part 808—Required Sources of Supplies and Services on May 20, 2019. The class deviation from the VAAR supersedes and effectively updates the language previously set forth in Class Deviation from 808.002, Priorities for Use of Mandatory Government Sources, dated February 9, 2018. On May 20, 2019, the United States Court of Appeals for the Federal Circuit (the Federal Circuit) issued a mandate effectuating the October 17, 2018 decision in *PDS Consultants, Inc., v. The United States, Winston-Salem Industries for the Blind*, (PDS Consultants) and creating a binding circuit precedent which necessitated immediate policy change. Accordingly, the class deviation authorizes contracting officers to deviate from VAAR 808.002 and 808.603 to reflect language consistent with the decision of the Federal Circuit.

Specifically, the class deviation requires VA contracting officers to apply the VA Rule of Two, as implemented in VAAR subpart 819.70, before awarding a contract to a qualified nonprofit organization under the Javits-Wagner O'Day Act (JWOD) or making a contract award to Federal Prison Industries, Inc. (FPI). The deviation clarifies that if VA is unable to award to a Vendor Information Pages (VIP)-listed and verified service-disabled veteran-owned small business (SDVOSB) or a veteran-owned small business (VOSB) using the procedures set forth in VAAR subpart 819.70, AbilityOne nonprofit organization and FPI would retain their mandatory source status.

VA has determined that this publication in the **Federal Register** is necessary to make conforming edits to the CFR in order to clarify existing requirements to both the agency's acquisition workforce and industry stakeholders.

This document provides a comment period of 30 days in which commenters may address VA's approach to implementing the Federal Circuit mandate, as set forth in the class deviation and the conforming amendments to the CFR set forth in this publication. VA believes 30 days is sufficient to provide comments given the litigation history and the information being requested. As discussed above, the Federal Circuit's mandate required that the agency's acquisition workforce immediately comply with the binding precedent. This demonstrates that a delay of the effective date of the rule on the public would be unnecessary. Accordingly, the Secretary finds good cause to dispense with the opportunity for advanced notice and opportunity for public comment and to publish this temporary rule with an effective date of June 24, 2019.

Executive Orders 12866

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not be a significant regulatory action under E.O. 12866.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. Section 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. Section 804(2).

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on June 13, 2019, for publication.

Dated: June 18, 2019.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, we amend 48 CFR part 808 as follows:

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for part 808 continues to read as follows:

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

■ 2. In § 808.002, revise the section heading and paragraphs (a) and (b) to read as follows:

§ 808.002 Priorities for use of mandatory Government sources.

(a) *Sources.* 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 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).

* * * * *

■ 3. Revise § 808.603 to read as follows:

§ 808.603 Purchasing priorities.

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

[FR Doc. 2019–13217 Filed 6–21–19; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 817 and 852

RIN 2900–AQ19

VA Acquisition Regulation: Special Contracting Methods

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA

Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, VA will publish them in the **Federal Register**. In particular, this rulemaking revises VAAR coverage concerning Special Contracting Methods as well as an affected part covering Solicitation Provisions and Contract Clauses.

DATES: This rule is effective on July 24, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 27, 2018, VA published a proposed rule in the **Federal Register** (83 FR 66662) which announced VA's intent to amend regulations for VAAR Case RIN 2900–AQ19—VA Acquisition Regulation: Special Contracting Methods. VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the proposed rule ended on February 25, 2019 and VA received one comment. VA makes no changes to this final rule as a result of the one comment received. However, this rule adopts as a final rule, the proposed rule that published in the **Federal Register** on December 27, 2018, along with two technical non-substantive changes to the proposed rule and minor formatting and/or grammatical edits. The two technical non-substantive changes to the proposed rule are described below.

In particular, this final rule revises part 817, Special Contracting Methods. This final rule removes subpart 817.1, Multi-year Contracting, in its entirety since it deals with internal procedures about the uses of multi-year contracting and internal approvals to be obtained. This final rule also removes subpart 817.2 in its entirety by removing 817.202, Use of options, and 817.204, Contracts. 817.202 consisted of internal procedures to develop solicitations and cost comparisons under Office of Management and Budget Circular A–76. Since there is currently a moratorium on public-private competitions this will not be moved to the VAAM. 817.204,

Contracts, contained internal procedures and approvals to be obtained for contracts with option periods greater than five years, and this coverage was moved to the VAAM.

This rule removes subpart 817.4, Leader Company Contracting, and 817.402, Limitations, since they included internal procedures and approval requirements for leader company contracts. The coverage was moved to the VAAM.

This final rule revises the title of subpart 817.5 to read “Interagency Acquisitions,” and adds 817.501, General, which requires that any governmental entity that acquires goods and services on behalf of the Department of Veterans Affairs shall comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70.

This regulatory action removes 817.502, General, which is replaced with updated policy in 817.501. The coverage was moved to comport with the numbering in the FAR.

This rule adds subpart 817.70, Undefinitized Contract Actions, to provide policy and procedures for the use of undefinitized contract actions (UCAs) as UCAs are a high-risk method of procurement. This final rule adds 817.7000, Scope, which describes the material being introduced in this subpart, and 817.7001, Definitions, to provide definitions of four terms used in the subpart: contract action, definitization, definitization proposal, and undefinitized contract action.

This final rule also adds 817.7002, Exceptions, which exempts simplified acquisitions and congressionally mandated long-lead procurement contracts from this policy but requires the contracting officer to apply the policy and procedures to the maximum extent practicable.

817.7003, Policy, was added to clearly convey that undefinitized contract actions should be limited to situations where it is not possible to negotiate a definitive contract action in time to meet the government's requirements, and where the interests of the government demand that the contractor be given a commitment so that contract performance can begin immediately.

This final rule adds 817.7004, Limitations, with no text, and the following sections: 817.7004–1, Authorization, which provides guidance as to when the contracting officer must obtain approval to use an undefinitized contract action; and 817.7004–2, Price ceiling, which requires all undefinitized