

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 804, 805, 849, and 852

RIN 2900-AQ77

VA Acquisition Regulation: Administrative Matters; Publicizing Contract Actions; and Termination of Contracts

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VAAM, and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors.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, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. This rulemaking revises VAAR coverage concerning Administrative Matters, Publicizing Contract Actions, and Termination of Contracts, as well as an affected part concerning Solicitation Provisions and Contract Clauses.

DATES: Comments must be received on or before April 13, 2020 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to 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 “RIN 2900-AQ77—VA Acquisition Regulation: Administrative Matters; Publicizing Contract Actions; and Termination of Contracts.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In

addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

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:

Background

This action is being taken under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR. This authority ensures that Government procurements are handled fairly and consistently, that the Government receives overall best value, and that the Government and contractors both operate under a known set of rules.

The proposed rule would update the VAAR to current FAR titles, requirements, and definitions; it would correct inconsistencies and remove redundancies and duplicate material already covered by the FAR; it would also delete outdated material or information and appropriately renumber VAAR text, clauses, and provisions where required to comport with FAR format, numbering and arrangement. All amendments, revisions, and removals have been reviewed and concurred with by an Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are broken up consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and paragraphs.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. The VAAM will not be finalized until corresponding VAAR parts are finalized, and therefore the VAAM is not yet available on line.

VAAR Part 804—Administrative Matters

Under part 804, Administrative Matters, we propose to add the authority citation for 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. We propose to revise the authority citation of 40 U.S.C. 121 to remove the reference to paragraph (d), as paragraph (c) which will be retained comports with FAR and VAAR standard usage and reference to paragraph (d) is unnecessary. We propose to remove the authority citation of 38 U.S.C. 8127 and 8128 as the section requiring the citation, 804.1102, Vendor Information Pages (VIP) Database, is being moved to part 819, Small Business Programs. The authorities cited for this part are 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

We propose to remove subpart 804.1, Contract Execution, and section 804.101, Contracting officer's signature, because it duplicates coverage in the FAR. This proposed rule would also remove section 804.1102, Vendor Information Pages (VIP) Database, as this information is being moved to part 819, Small Business Programs.

We propose to add subpart 804.13, Personal Identity Verification, and section 804.1303, Contract clause, to prescribe clause 852.204–70, Personal Identity Verification of Contractor Personnel, which requires personal identity verification of all employees performing under a contract when

frequent and continuing access to VA facilities or information systems is required.

VAAR Part 805—Publicizing Contract Actions

We propose to remove and reserve part 805. Under this part, we propose to remove section 805.202, Exceptions, as duplicative of FAR coverage at 6.302–5. This proposed rule would also remove section 805.205, Special situations, since it duplicates coverage at FAR 5.101(b) and 5.502(a). Finally, this proposed rule would remove section 805.207, Preparation and transmittal of synopses, as the guidance it provides is outdated and does not add value.

VAAR Part 849—Termination of Contracts

Under part 849, Termination of Contracts, we propose to remove 41 U.S.C. 1121(c)(3), which addresses the authority of the Administrator of OFPP to prescribe Government-wide policies to be implemented in the FAR. The authorities cited for this part are 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

We propose to remove the entire subpart 849.1, General Principles, as it contains internal guidance. Specifically, sections 849.101, Authorities and responsibilities, and 849.106, Fraud or other criminal conduct, are proposed for removal as they contain internal procedures which will be addressed in VAAM. We propose to remove sections 849.811, Review of proposed settlements, 849.111–70, Required review, and 849.111–71, Submission of information, as they include outdated information and internal procedures which will be updated and addressed in the VAAM.

This proposed rule would add subpart 849.5, Contract Termination Clauses, and section 849.504–70, Termination of mortuary services, to prescribe clause 852.249–70, Termination for Default—Supplement for Mortuary Services, in all solicitations and contracts for mortuary services containing the FAR clause 52.249–8, Default (Fixed-Price Supply and Service).

VAAR Part 852—Solicitation Provisions and Contract Clauses

We propose to add clause 852.204–70, Personal Identity Verification of Contractor Personnel, to require contractor compliance with Department of Veterans Affairs policy for personal identity verification of all employees performing under a contract that requires frequent and continuing access to VA facilities or information systems.

We propose to add clause 852.249–70, Termination for Default—Supplement for Mortuary Services, which supplements FAR clause 52.249–8, Default (Fixed-Price Supply and Service), to identify specific circumstances in which the Government may terminate for default in contracts for mortuary services.

Executive Orders 12866, 13563 and 13771

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on

a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Parts 804, 805, and 849

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

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. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on January 28, 2020, for publication.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR parts 804, 805, 849, and 852 as follows:

PART 804—ADMINISTRATIVE MATTERS

■ 1. The authority citation for part 804 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 804.1 [Removed and Reserved]

■ 2. Subpart 804.1, consisting of sections 804.101 and 804.1102, is removed and reserved.

■ 3. Subpart 804.13 is added to read as follows:

Subpart 804.13—Personal Identity Verification**804.1303 Contract clause.**

The contracting officer shall insert the clause at 852.204–70, Personal Identity Verification of Contractor Personnel, in solicitations and contracts that require contractor employees to have routine access to a VA facility or to VA information systems. This clause is used in conjunction with FAR clause 52.204–9, Personal Identity Verification of Contractor Personnel.

PART 805 [Removed and Reserved]

■ 4. Part 805, consisting of sections 805.202, 805.205, and 805.207, is removed and reserved under the authority of 40 U.S.C. 121(c) and 48 CFR 1.301 through 1.304.

PART 849—TERMINATION OF CONTRACTS

■ 5. The authority citation for part 849 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 849.1 [Removed and Reserved]

■ 6. Subpart 849.1, consisting of sections 849.101, 849.106, 849.111, 849.111–70, and 849.111–71, is removed and reserved.

■ 7. Subpart 849.5 is revised to read as follows:

Subpart 849.5—Contract Termination Clauses**849.504–70 Termination of mortuary services.**

Use the clause at 852.249–70, Termination for Default—Supplement

for Mortuary Services, in all solicitations and contracts for mortuary services containing the FAR clause 52.249–8, Default (Fixed-Price Supply and Service).

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. The authority citation for part 852 continues to read as follows:

Authority: Pub. L. 101–647; 20 U.S.C. 7181–7183; 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 852.2—Text of Provisions and Clauses

■ 9. Section 852.204–70 is added to read as follows:

852.204–70 Personal Identity Verification of Contractor Personnel.

As prescribed in 804.1303, insert the following clause:

Personal Identity Verification of Contractor Personnel (Date)

(a) The Contractor shall comply with current Department of Veterans Affairs policy for personal identity verification of all employees performing under this contract when frequent and continuing access to VA facilities or information systems is required.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to VA facilities or information systems.

(End of clause)

■ 10. Section 852.249–70 is revised to read as follows:

852.249–70 Termination for Default—Supplement for Mortuary Services.

As prescribed in 849.504–70, insert the following clause:

Termination for Default—Supplement for Mortuary Services (Date)

The FAR clause entitled Default (Fixed-Price Supply and Service), at 52.249–8, is supplemented as follows:

The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(a) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Veteran Affairs in fulfilling its responsibility for proper care of remains;

(b) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(c) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(d) The Contractor refuses to perform the services required for any particular remains; or

(e) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

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