

Date: July 28, 2023

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: VA Acquisition Regulation (VAAR) Class Deviation to VAAR Part 815, Contracting by Negotiation, and Subpart 819.70, The VA Veterans First Contracting Program

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, and VAAR 801.404, Class deviations, to move the coverage at VAAR 819.7010, Tiered Set-Aside Evaluation, to part 815, Contracting by Negotiation. As a result, VA Acquisition Regulation (VAAR) Class Deviation to VAAR 819.7010, Tiered Set-Aside Evaluation, dated May 4, 2023, is rescinded.

2. VAAR Parts Impacted: VAAR parts 815 and 819.

3. Effective Date. Immediately.

4. Expiration Date. This deviation expires when incorporated into the VAAR or is otherwise rescinded.

5. Applicability. This class deviation applies to all VA contracting activities.

6. Exceptions. None.

7. Background

a. Current VAAR Policy. Currently, the VA acquisition policy regarding tiered set-aside evaluation resides at 819.7010.

b. Need for Deviation. The deviation is needed to appropriately move VA acquisition policy concerning tiered set-aside evaluation from VAAR section 819.7010 to a new VAAR section 815.101-370, Tiered set-aside evaluation, to align with the FAR.

c. New Policy. VAAR section 815.101-370 is added, as shown in the attachment, under new VAAR subpart 815.1, Source Selection Processes and Techniques, containing the underlying sections 815.101, Best value continuum; 815.101-3, Tiered evaluation of small business offers; and 815.101-370, Tiered set-aside evaluation. As a result, VAAR 819.7010 is removed and reserved, also as shown in the attachment.

8. Required Action. Contracting officers shall comply with this class deviation.

9. Additional information. Send questions to va.procurement.policy@va.gov.

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Attachment – VA Acquisition Regulation (VAAR) Class Deviation to VAAR Part 815, Contracting by Negotiation, and Subpart 819.70, The VA Veterans First Contracting Program (JUL 2023) (DEVIATION)

Attachment

VA Acquisition Regulation (VAAR) Class Deviation to VAAR Part 815, Contracting by Negotiation, and Subpart 819.70, The VA Veterans First Contracting Program (JUL 2023) (DEVIATION)

CLASS DEVIATION

VAAR Text Baseline is 48 CFR chapter 8 dated July 12, 2023.

Changes to baseline shown as **[bolded, bracketed additions]** and strikethrough deletions.

VAAR text unchanged shown as asterisks.

PART 815—CONTRACTING BY NEGOTIATION

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[SUBPART 815.1 – Source Selection Processes and Techniques (DEVIATION)

815.101 Best value continuum. (DEVIATION)

815.101-3 Tiered evaluation of small business offers. (DEVIATION)

815.101-370 Tiered set-aside evaluation. (DEVIATION)

(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set-aside evaluation approach to minimize delays in the re-solicitation process.

(b) Tiered evaluation of offers is a procedure that may be used in competitive acquisitions when the VA Rule of Two determination indicates a set-aside is required in accordance with VAAR 802.101. Tiered evaluations can minimize delays associated with cancelation and resolicitation in the event that offers received by SDVOSB and VOSB are not acceptable. The contracting officer—

(1) Solicits and receives offers from targeted tiers of small business groups, with SDVOSB as the first tier and VOSB as the second tier;

(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

(c) Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation—

- (1) Tiered evaluations limited to certified SDVOSBs and VOSBs;
- (2) Tiered evaluations including all other small business concerns; or
- (3) Tiered evaluations including other than small business concerns.

(d) The tiered order of priority shall be consistent with [VAAR 819.7005](#). Consideration shall be given to HUBZone, 8(a), and women-owned small business concerns before evaluating offers from other small business concerns in accordance with [VAAR 819.7005\(b\)\(4\).](#)

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Changes to baseline shown as **[bolded, bracketed additions]** and strikethrough deletions.
VAAR text unchanged shown as asterisks.

PART 819—SMALL BUSINESS PROGRAMS

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819.7010 ~~Tiered set aside evaluation.~~ **[[RESERVED]] (MAY [JUL] 2023)(DEVIATION)**

~~(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set aside evaluation approach to minimize delays in the re-solicitation process.~~

~~(b) Tiered evaluation of offers is a procedure that may be used in competitive negotiated acquisitions, including construction and acquisitions for commercial products and commercial services when the VA Rule of Two (see 802.101) determination indicates a set aside is required, but other circumstances preclude a confident conclusion that an award can be made at the SDVOSB or VOSB tier. The contracting officer—~~

~~(1) Solicits and receives offers from targeted tiers of small business groups, with certified SDVOSB as the first tier and certified VOSB as the second tier;~~

~~(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and~~

~~(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.~~

~~(c) *Tiered order of priority.* Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation:~~

~~(1) Tiered evaluations limited to certified SDVOSBs or VOSBs.~~

~~(2) Tiered evaluations including 8(a) and HUBZone small businesses.~~

~~(3) Tiered evaluations including all other small business concerns.~~

~~(4) Tiered evaluations including other than small businesses.~~

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