

**48 CFR Part 825****RIN 2900-AQ79****VA Acquisition Regulation: Foreign Acquisition**

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(VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to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 These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors.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**. In particular, this rulemaking removes VAAR coverage concerning Foreign Acquisition.

DATES: This rule is effective on [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Bogdan Vaga, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 894-0686. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 9, 2020, VA published a proposed rule in the Federal Register (85 FR 35238) which announced VA's intent to amend regulations

for VAAR Case RIN 2900-AQ79 – VA Acquisition Regulation: Foreign Acquisition. 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 August 10, 2020 and VA received comments from seven respondents. This rule adopts as a final rule the proposed rule published in the Federal Register on June 9, 2020, with the exception of minor formatting edits.

As stated previously, VA received comments from seven respondents.

A summary of the comments and the issues raised are provided as follows:

One commenter expressed support for the Buy American Act and concern regarding future procurements from China. VA is fully committed to complying with the Buy American Act as set forth in the Federal Acquisition Regulation.

Multiple respondents expressed concern about the Los Angeles Metropolitan Transportation Authority awarding a contract to a Chinese firm to build railcars for their public transportation system. VA appreciates these comments. However, the VA does not have any authority with the Los Angeles Metropolitan Transportation Authority and has no influence regarding this organization's procurement decisions. As the comment does not specifically address issues with the proposed rule, VA is making no revisions as a result of these comments.

Multiple respondents expressed concern that VA was attempting to eliminate the requirement to comply with the Buy American Act via the removal of Part 825 which results from this rulemaking. VA is fully committed to complying with and implementing all Buy American Statutes. The updating of the VAAR to remove coverage at 825 does not in any way create loopholes to circumvent the FAR or the Buy American Statutes. As a Federal agency, VA must comply with all federal regulations, statutes, rules, etc.

Another commenter expressed consternation regarding a school in Los Angeles that would be encroaching on VA property if it were to expand beyond its existing

boundaries. In regard to the concern expressed about the expansion of the “Brentwood school” and its possible encroachment on VA property, this rulemaking has no impact on this situation, and this is beyond the purview of this regulation. As the comment does not specifically address issues with the proposed rule applicable to VA procurements, VA is making no revisions as a result of the comment.

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). Executive Order 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 rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Paperwork Reduction Act

This final 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 final rule will 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). The rule primarily affects the use of authorities that VA contracting officers are already authorized by statute to utilize when required and in accordance with existing agency regulation, policies and procedures. This rule appropriately clarifies and revises the use of such authorities and when certain justification and approval requirements apply. The authorities were previously codified in the VAAR either in this part or in other parts, to include those affecting small business programs, and they affected both large and small entities alike. With this rule, VA ensures content to supplement the FAR for VA's unique service-disabled veteran-owned small business and veteran-owned small business program is properly implemented in this part.

The overall impact of the rule is of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating processes or procedures. This rule will ensure clarity for both the public and VA contracting officers to ensure that when such authorities are utilized, they are properly cited and, when required, appropriately documented and publicized. This rulemaking does not change VA's policy regarding small businesses. VA estimates that no cost or economic impact to individual businesses will result from this rule update. VA estimates this final rule is not expected to result in increased or decreased costs to small business entities, and no more than *de minimis* costs. On this basis, the final rule does 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. 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 final rule will have no such effect on State, local, and tribal Governments or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 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. 804(2).

List of Subjects in 48 CFR Part 825

Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

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. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on December 8, 2020, for publication.

Luvenia Potts,

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

Accordingly, under the authority of 40 U.S.C. 121(c), 41 U.S.C. 1702; and 48 CFR 1.301-1.304, VA amends 48 CFR by removing and reserving part 825.

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