



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 844 and 845

RIN 2900-AQ05

VA Acquisition Regulation: Subcontracting Policies and Procedures; Government Property

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(VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate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 These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors.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, we will publish them in the Federal Register. In particular, this rulemaking revises VAAR concerning Subcontracting Policies and Procedures and Government Property.

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

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 April 6, 2018, VA published a proposed rule in the Federal Register (83 FR 14833) which announced VA's intent to amend regulations for VAAR Case RIN 2900-AQ05 (Parts 844 and 845). In particular, this final rule implements FAR part 44 by making public VA's additional requirements for providing its consent to subcontract, describes items that should be evaluated as a part of a contractor's purchasing system review and establishes that contractors should determine whether subcontract items meet the FAR definition of a commercial item and implements and supplements FAR part 45 by addressing procedures for contractors to document their acquisition of property for use in the service of VA contracts; to address the transfer of title to the Government of contractor-acquired property; and to outline the procedures for the use of such property on a successor contract.

VA provided a 60-day comment period for the public to respond to the proposed rule. The comment period for the proposed rule ended on June 5, 2018 and VA received no comments. This document adopts as a final rule the proposed rule published in the Federal Register on April 6, 2018, with minor formatting and/or grammatical edits.

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.

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

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 overall impact of this final rule will be 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 procedures. VA is merely adding existing and current regulatory requirements to the VAAR and removing any guidance that is applicable only to VA’s internal operation processes or procedures. VA estimates no cost impact to individual businesses would result from these rule updates. 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 final 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,

under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal Governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined this rule is not a

significant regulatory action under E.O. 12866. This final rule is not an EO 13771 regulatory action because this rule is not significant under EO 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 Web site at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date.

List of Subjects

48 CFR Part 844

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 845

Government procurement, Government property, Reporting and recordkeeping requirements.

Signing Authority

The Secretary of Veterans Affairs 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 August 24, 2018, for publication.

Dated: September 12, 2018.

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

For the reasons set out in the preamble, VA amends 48 CFR by adding parts 844 and 845 to read as follows:

PART 844—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

Subpart 844.2— Consent to Subcontracts

844.202-2 Considerations.

Subpart 844.3—Contractors' Purchasing Systems Reviews

844.303 Extent of review.

Subpart 844.4—Subcontracts for Commercial Items and Commercial Components

844.402 Policy requirements.

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

Subpart 844.2—Consent to Subcontracts

844.202-2 Considerations.

(a)(14) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as being fair, reasonable, and representing the best value to the Government?

Subpart 844.3—Contractors' Purchasing Systems Reviews

844.303 Extent of review.

(f) Policies and procedures pertaining to the use of VA-verified Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) and utilization in accordance with subpart 819.70 and the Veterans First Contracting Program;

(l) Documentation of commercial item determinations to ensure compliance with the definition of “commercial item” in FAR 2.101; and

(m) For acquisitions involving electronic parts, that the contractor has implemented a counterfeit electronic part detection and avoidance system to ensure that counterfeit electronic parts do not enter the supply chain.

Subpart 844.4—Subcontracts for Commercial Items and Commercial Components

844.402 Policy requirements.

(a)(3) Determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer’s responsibilities or determinations made under FAR 15.403-1(c)(3).

PART 845—GOVERNMENT PROPERTY

Sec.

Subpart 845.4—Title to Government Property

845.402 Title to contractor-acquired property.

845.402-70 Policy.

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

Subpart 845.4—Title to Government Property

845.402 Title to contractor-acquired property.

845.402-70 Policy.

(a) For other than firm-fixed-price contracts, contractor-acquired property items not anticipated at time of contract award, or not otherwise specified for delivery on an existing line item, shall, by means of a contract modification, be specified for delivery to the Government on an added contract line item. The value of such contractor-acquired property item shall be recorded at the original purchase cost. Unless otherwise noted by the contractor at the time of delivery to the Government, the placed-in-service date shall be the date of acquisition or completed manufacture, if fabricated.

(b) Following delivery and acceptance by the Government of contractor-acquired property items, if these items are to be retained by the contractor for continued use under a successor contract, these items become Government-furnished property (GFP). The items shall be added to the successor contract as GFP by contract modification.

(c) Individual contractor-acquired property items should be recorded in the contractor's property management system at the contractor's original purchase cost.

(d) All other contractor inventory that is excess to the needs of the contract shall be disposed of in accordance with FAR subpart 45.6.

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