



# VAAR Case Study

## VA Acquisition Regulation: Plain Language Re-Write

### Introduction

On January 15, 2008, the Department of Veterans Affairs published a "Final Rule" in the Federal Register re-writing the Department of Veterans Affairs supplement to the Federal Acquisition Regulation<sup>1</sup>, hereafter referred to as the Veterans Affairs Acquisition Regulation or VAAR. This was a significant revision to the existing VAAR, requiring extensive time and effort. The basic question is: Why was this "rewrite" required?

### Analysis

To understand the rationale, one has to return to the first time the change to the FAR was proposed. This occurred nearly two years earlier on January 13, 2006, when a "Proposed Rule" to change the VAAR was published in the Federal Register.<sup>2</sup> Among the reasons given for the proposed rule were "rewriting the VAAR to conform to plain language principles", "changing delegations of authority for the purpose of becoming more efficient", "removing non-regulatory material", "make the VAAR parallel to the Federal Acquisition Regulation (FAR) as required by subpart 1.3 of the FAR", removing "provisions that simply restate FAR provisions" as well as numerous other changes. Approximately two dozen significant comments on the proposed rule were received, which were summarized when the final rule was published.

### Data

One comment concerned clause prescriptions at FAR Part 52. Specifically, the commenter indicated use of the words "must" and "shall" were inconsistent. The commenter recommended selecting one term or the other throughout the VAAR. The Department of Veterans Affairs (VA) replied in the Final Rule that all clause prescriptions were changed from "must insert" to "shall insert". While this statement is narrowly correct, a review of the Final Rule indicates numerous continued uses of both "must" and "shall" in the VAAR. The use of "shall" for a mandatory action is required by the FAR Drafting Guide.<sup>3</sup> However, the Federal Plain Language Guide (which is cited in the FAR Drafting Guide) recommends the use of "must" instead of shall.

Another commenter expressed concern about the lead in language in section 812.301(a). The draft rule stated "Regardless of provisions in other parts of the VAAR, contracting officers must use only those provisions and clauses in this part when acquiring commercial items." Specifically, the commenter indicated this may mean the clauses in Part 812 are mandatory. In the Final Rule, VA changed this to "Regardless of provisions in other parts of the VAAR, contracting officers may use, as appropriate, only those provisions and clauses referred to in this part when acquiring commercial items."



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There were several comments that VA believed were beyond the scope of the Proposed Rule. For instance “several comments” that suggested changes to Part 801, VA’s response was that the referenced sections (which were not specifically stated) were “internal to VA and do not impact the public.” In another instance in response to a comment that “VAAR language should be updated to keep pace with the direction of Federal procurement”, VA stated that “updating is a continuing process; we will continue to seek to ensure that VAAR is current and up to date.”

Other comments stated that the VAAR needed to be updated to reflect performance-based acquisition and preference for acquisition of commercial items or services. VA responded to one comment by stating “updating is an ongoing process” while responding to another on the same topic by indicating “VA relies on the FAR for such guidance”.

## Conclusion

Was VA responsive to comments that were submitted? More importantly, did VA meet the its stated intent of making changes to use plain language principles, update delegation and remove non-regulatory material? Who are the stakeholders in this change?

## NOTES

<sup>1</sup> VA Acquisition Regulation: Plain Language Rewrite; Final Rule, 73 Fed. Reg. No. 10 (November 14, 2008) (to be codified at 48 CFR Parts 2, 22, and 52)

<sup>2</sup> VA Acquisition Regulation: Plain Language Rewrite; Proposed Rule, 71 Fed. Reg. No. 9 (January 13, 2006) (to be codified at 48 C.F.R. Chapter 8)

<sup>3</sup>FAR Rulemaking Guide. Version 5. April 30, 2011. Available at <http://www.acq.osd.mil/dpap/dars/docs/FAR%20Drafting%20Guide--April%2030,%202011.pdf>

<sup>4</sup> Federal Plain Language Guidelines. Revision 1, May 2011. Available at <http://www.plainlanguage.gov>