

## CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

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## SUBCHAPTER A—GENERAL

### PART 800 [RESERVED]

### PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

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AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

**801.000 Scope of part.**

This part sets out general Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) policies, including information regarding the maintenance and administration of the VAAR, acquisition policies and practices, and procedures for deviation from the VAAR and the Federal Acquisition Regulation (FAR).

**Subpart 801.1—Purpose, Authority, Issuance****801.101 Purpose.**

(a) VA established the VAAR to codify and publish uniform policies and procedures for VA's acquisition of supplies and services, including construction.

(b) The VAAR implements and supplements the FAR.

**801.103 Authority.**

The Secretary issues the VAAR under the authority of 40 U.S.C. 121(c), Title 48 of the Code of Federal Regulations (CFR) 1.301 through 1.304, and other authorities as cited.

**801.104 Applicability.**

(a) Unless otherwise specified in this chapter or excepted by statute (i.e., expenditures of the VA Canteen Service) or other VA regulations, the FAR and VAAR apply to all VA acquisitions (including construction) made with appropriated funds. Supply Fund monies (38 U.S.C. 8121) and General Post Funds (38 U.S.C. 8302) are appropriated funds.

(b) Use the VAAR and the FAR together. The FAR applies to VA acquisitions except as provided in the VAAR.

**801.104–70 Exclusions.**

The FAR and VAAR do not apply to purchases and contracts that use General Post Funds if using the FAR and the VAAR would infringe upon a donor's right to specify the exact item to be purchased and/or the source of supply (38 U.S.C. 8303).

**801.105 Issuance.****801.105–2 Arrangement of regulations.**

(a) *General.* The VAAR is divided into subchapters, parts (each of which cov-

ers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every VAAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs.

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumeric using the following sequence: (a)(1)(i)(A)(I)(i).

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this Chapter.

(2) This chapter may be referred to as the “Department of Veterans Affairs Acquisition Regulation” or the “VAAR”.

(3) Using the VAAR coverage at 809.106–4(c) as a typical illustration, reference to the—

(i) Part would be “VAAR Part 809” outside the VAAR and “Part 809” within the VAAR.

(ii) Subpart would be “VAAR Subpart 809.1” outside the VAAR and “Subpart 809.1” within the VAAR.

(iii) Section would be “VAAR 809.106” outside the VAAR and “809.106” within the VAAR.

(iv) Subsection would be “VAAR 809.106–4” outside the VAAR and “809.106–4” within the VAAR.

(v) Paragraph would be “VAAR 809.106–4(c)” outside the VAAR and “809.106–4(c)” within the VAAR.

(4) Citations of authority (e.g., statutes or Executive orders) in the VAAR shall follow the FEDERAL REGISTER form guides.

**801.106 OMB approval under the Paperwork Reduction Act.**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), the Office of Management and Budget (OMB) has approved the reporting or recordkeeping provisions that are included in the VAAR and has

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given VA the following approval numbers:

48 CFR part or section where identified and described	Current OMB control No.	48 CFR part or section where identified and described	Current OMB No.
809.106-1 .....	2900-0418	852.228-71	2900-0590
809.504(d) .....	2900-0418	852.232-70- 852.232-71	2900-0422
813 .....	2900-0393	852.236-72	2900-0422
832.202-4 .....	2900-0688	852.236-79	2900-0208
836.606-71 .....	2900-0208	852.236-80 (Alt. I)	2900-0422
852.207-70 .....	2900-0590	852.236-88	2900-0422
852.209-70 .....	2900-0418	852.237-70	2900-0590
852.211-70 .....	2900-0587	852.237-73	2900-0863
852.211-72 .....	2900-0586	852.246-76 852.270-3	2900-0589

[73 FR 2717, Jan. 15, 2008, as amended at 83 FR 16207, Apr. 16, 2018; 83 FR 49304, Oct. 1, 2018; 84 FR 9971, Mar. 19, 2019; 84 FR 14625, Apr. 11, 2019; 84 FR 46452, Sept. 4, 2019]

**Subpart 801.2—Administration****801.201 Maintenance of the FAR.****801.201-1 The two councils.**

Revisions to the FAR are prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council. A designee of the Office of Acquisition and Materiel Management will represent VA on the Civilian Agency Acquisition Council.

**Subpart 801.3—Department Acquisition Regulations****801.304 Department control and compliance procedures.**

The Assistant Secretary for Management is designated as the Department's Chief Acquisition Officer. The Deputy Assistant Secretary (DAS) for Acquisition and Materiel Management is designated as the Department's Senior Procurement Executive (SPE). The Associate DAS for Acquisitions is designated as the Deputy Senior Procurement Executive (DSPE). The DSPE is responsible for amending the VAAR for compliance with FAR 1.304.

**Subpart 801.4—Deviations from the FAR or VAAR****801.403 Individual deviations.**

(a) Authority to authorize individual deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE.

(b) When a contracting officer considers it necessary to deviate from the policies in the FAR or VAAR, the contracting officer, in accordance with Administration or staff office procedures, must submit a request through the HCA to the DSPE for authority to deviate.

(c) The request to deviate must clearly state the circumstances warranting the deviation and the nature of the deviation.

(d) The DSPE may authorize individual deviations from the FAR and VAAR when an individual deviation is in the best interest of the Government. When the DSPE authorizes a deviation, the contracting officer must file the authorization in the purchase order or contract file.

**801.404 Class deviations.**

Authority to authorize class deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE. The DSPE may authorize class deviations from the FAR and VAAR when a class deviation is in the best interest of the Government. The DSPE must comply with the provisions of FAR 1.404 through the SPE.

## **Subpart 801.6—Career Development, Contracting Authority, and Responsibilities**

### **801.601 General.**

(a) The HCA or the DSPE, within their authority, may appoint a contracting officer under FAR 1.603 and VA's Contracting Officer Certification Program (COCF).

(b) In addition, the HCA may delegate micro-purchase authority to VA employees under VA's purchase card program.

(c) An individual may not commit the Government for purchases of supplies, equipment, or services unless the individual has received delegated contracting authority as a contracting officer or purchase card holder or as provided in 801.670. Individuals making such commitments or acting beyond the scope of their authority may be held financially liable.

### **801.602 Contracting officers.**

(a) Except as otherwise provided by statute, VA regulations, the VAAR, or the FAR, the authority vested in the Secretary to do the following is delegated to the SPE and is further delegated from the SPE to the DSPE:

(1) Execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds for construction and the acquisition of personal property and services (including architect-engineer services).

(2) Issue bills of lading.

(3) Sell personal property.

(4) Enter into leases, sales agreements, and other transactions.

(5) Prescribe and publish acquisition policies and procedures.

(6) Establish clear lines of contracting authority.

(7) Manage and enhance career development of the procurement work force.

(8) Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where VA should establish and apply Government-wide performance standards, and to participate in developing Government-wide procurement policies, regulations, and standards.

(9) Oversee the competition advocate program.

(b) The DSPE may further delegate authority to execute, award, and administer contracts, purchase orders, and other agreements to other VA officials, such as HCAs and contracting officers, in accordance with the COCF.

### **801.602–2 Responsibilities.**

In the administration of a contract, many problems can and do arise that make the advice and assistance of the Office of General Counsel (OGC) either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

### **801.602–3 Ratification of unauthorized commitments.**

(a) This section applies to unauthorized commitments, including any commitment made by a contracting officer that exceeds that contracting officer's contracting authority and unauthorized commitments made by individuals who lack contracting authority.

(b) A contracting officer must not ratify unauthorized commitments made by other VA personnel or by another contracting officer who lacks authority without prior approval as specified in paragraphs (b)(1) through (b)(3) of this section. The specified approval authorities may not be re-delegated.

(1) At field facilities, for supplies, services (except leases of real property), and construction, the approving authority for unauthorized commitments made by staff assigned to a field facility is the HCA.

(2) For VA Central Office (VACO) organizations, for supplies, services (except leases of real property), and construction, the approving authorities for unauthorized commitments made by staff assigned to the Administrations are the respective chief financial officers of the Administrations concerned.

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The approving authority for unauthorized commitments made by staff assigned to any other organization within VACO is the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For unauthorized commitments for leasehold interest in real property, the approving authority is:

(i) The Director, Office of Construction and Facilities Management, for unauthorized commitments for 1-5,000 square feet of space or for 1-100 parking spaces costing less than \$50,000 per annum.

(ii) The Under Secretary for Health for unauthorized commitments for 5,001-20,000 square feet of space or for more than 100 parking spaces costing less than \$100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet of space and above or for more than 100 parking spaces costing more than \$100,000 per annum.

(c) The process for contracting officer requests for ratification will be as follows:

(1) The individual who made the unauthorized commitment will furnish the contracting officer with all records and documents concerning the commitment and a complete written statement of facts that includes the following:

(i) Why the procurement office was not used.

(ii) Why the proposed contractor was selected.

(iii) Other sources that were considered.

(iv) A description of work to be performed or products to be furnished.

(v) The estimated or agreed contract price.

(vi) A citation of the appropriation available.

(vii) A statement of whether the contractor has commenced performance.

(viii) The name of the individual responsible for the unauthorized commitment.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (b) of this section with any comments or information that the approving authority should consider in evaluating the request for ratification. If the approving authority determines that a

legal review would be desirable, the approving authority will coordinate the request for ratification with OGC or the Regional Counsel, as appropriate.

(3) If the approving authority authorizes the ratification, the approving authority will return the file to the contracting officer for issuance of a purchase order or contract, as appropriate.

(d) If an otherwise proper contract award exceeds the limits of the contracting officer's delegated authority, the ratifying contracting officer must comply with the above requirements and the approving authority must inform the HCA. The HCA will take action to preclude future instances of such awards.

### 801.602-70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602-71 through 801.602-76 that is submitted for technical or legal review is submitted through or by an official at least one level above the contracting officer.

(b) Before opening a bid, awarding a contract, or signing a contract-related document as specified in 801.602-71 through 801.602-76, the contracting officer shall ensure that the appropriate VA official, including appropriate staff of the Acquisition Resources Service regional or VA Central Office, has reviewed and concurred with the document.

(c) Before signing a contract for a Veterans Benefits Administration field facility for any guidance center or vocational rehabilitation service with an anticipated expenditure of \$100,000 or more, the contracting officer shall ensure that the Director, Vocational Rehabilitation and Employment Service, has reviewed and approved the solicitation or proposed contract.

(d) When the following items are for the management, sale, or lease of properties acquired by VA after liquidation of a guaranteed, direct, acquired, or vendee loan, the review requirements specified in 801.602-71 through 801.602-76 do not apply:

(1) Agreements.

(2) Licenses.

(3) Easements.

(4) Deeds.

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(e) If there is insufficient time for the legal review required in 801.602-75(a)(3), the contracting officer (except contracting officers in the Office of Construction and Facilities Management) must at least obtain verbal concurrence from Acquisition Resources Service staff before issuing a change order where:

(1) The change order (unilateral agreement) has an anticipated value of \$100,000 or more; or

(2) The change order is for a time extension of 60 days or more.

(f) Unless otherwise stated, all dollar values in 801.602-71 through 801.602-76 are expressed in total dollars involved in the acquisition action.

(1) The contracting officer may not consider the positive and negative status of the figures in determining the total dollar values involved.

(2) An acquisition of \$550,000 with a trade-in credit of \$70,000 would be valued at \$620,000 for legal or technical review purposes rather than the net amount of \$480,000. An Energy Savings Performance Contract requiring payment from savings of \$10,000,000 to the contractor over the life of the contract would be valued at \$10,000,000, despite the fact that there is no immediate cost to VA and no payment if there are no savings.

(g) By separate notice, the DSPE may require technical review of any contract-related materials, regardless of dollar value.

(h) Except as set forth in 801.602-73 and 801.602-75, at its discretion, the Office of Acquisition and Materiel Management may request OGC review.

(i) The requirements of this section or sections 801.602-71 through 801.602-76 do not apply to contracts awarded by or on behalf of the VA Office of Inspector General.

(j) Contracting officers and purchase card holders must ensure compliance with separate guidance on information technology (IT) tracking and approval prior to processing requests for acquisitions of IT and telecommunications software, equipment, and/or services, regardless of dollar value.

**801.602-71 Basic review requirements.**

Contracting officers must obtain technical review from Acquisition Re-

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sources Service staff of the documents set forth in column one of Table 801.602-71 that have anticipated award values equal to or greater than the value in column two.

TABLE 801.602-71

Document	Anticipated contract award value
(a) Supply or service solicitations or quotations (except as provided in 801.602-72 through 801.602-75) (includes indefinite quantity, option year, and multi-year solicitations or quotations where the contracting officer reasonably expects expenditures of \$500,000 or more, inclusive of options).	\$500,000 or more.
(b) Supply or service solicitations or quotations where a consolidated acquisition activity is performing acquisitions for three or more physically separated VA medical centers (excluding outpatient clinics).	\$750,000 or more.
(c) Fixed price, sealed bid construction solicitations, other than 8(a) construction solicitations.	\$1 million or more.
(d) 8(a) construction solicitations and task orders.	\$500,000 or more.
(e) Request for Proposal (negotiated) construction solicitations and task orders.	\$500,000 or more.
(f) Proposed task/delivery orders and blanket purchase agreements (includes orders under Federal Supply Schedule contracts).	\$500,000 or more.
(g) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts (see 816.102(b)).	\$100,000 or more.
(h) Utility service agreements .....	\$50,000 or more.
(i) Solicitations for advisory and assistance services (see 837.2).	\$100,000 or more.
(j) Proposed letter contracts and ensuing formal contracts.	\$25,000.

**801.602-72 Exceptions and additional review requirements.**

(a) In addition to the general review requirements in 801.602-71, contracting officers must obtain technical reviews from Acquisition Resources Service staff of any proposed agreement that is unique, novel, or unusual.

(b) Contracting officers must obtain technical reviews from Acquisition Resources Service staff of the following:

(1) Documents relating to bonds (see FAR 28.102-1 and 28.203 through 28.203-5) as follows:

(i) An irrevocable letter of credit.

(ii) A tripartite escrow agreement.

(iii) An individual surety bond. (Note that the FAR at 28.203(f) also requires legal review of the documents pledging the assets of an individual surety.)



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(2) Proposed novation and change-of-name agreements (see FAR Subpart 42.12).

(3) Solicitations or proposed contracts containing an economic price adjustment clause (other than a pre-approved VA clause) based on a cost index of material or labor (e.g., the urban consumer price index (CPI-U) (see FAR 16.203-4(d)) or where one of the economic price adjustment clauses specified in FAR 16.203-4 are used.

(4) Proposed multi-year contracts where the cancellation ceiling exceeds 20 percent of the contract amount, regardless of the dollar value of the proposed contract (see 817.105-1(b)).

(5) Proposed solicitations where the contract term total of the basic and option periods may exceed 5 years, regardless of the dollar value of the proposed acquisition (see 817.204).

(6) Proposed membership agreements in a group purchasing organization.

(7) A proposed termination settlement or determination of amounts due the contractor under a terminated contract that involves the expenditure of \$100,000 or more of Government funds. Acquisition Resources Service staff shall obtain legal review (see 849.111-70).

(8) Consignment agreements with an anticipated expenditure of \$250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(c) Contracting officers, including purchase card holders, must obtain technical and legal review of all proposed contracts with hotels or similar facilities for conferences or similar functions (e.g., training, meetings) where VA's commitment, expenditure, and liability (combined) exceed \$25,000. This dollar figure is based on the combination of all direct costs to VA under the contract (e.g., conference rooms, audio-visual charges, refreshments, catering) and all potential liability (e.g., room guarantee liability, cancellation costs). Even if there is no direct cost to VA, if the proposed contract includes a guarantee on room usage or a cancellation fee that could potentially exceed \$25,000, the proposed contract requires legal and technical review. Signing a contract committing VA to hold a con-

ference at a particular hotel is a procurement and procurement laws and regulations must be followed.

### **801.602-73 Review requirements for scarce medical specialist contracts and contracts for health-care resources.**

For contracts to be awarded under the authority of either 38 U.S.C. 7409 or 38 U.S.C. 8153, contracting officers must obtain technical and legal reviews from the Medical Sharing Office, OGC, and Acquisition Resources Service staff of the following documents:

(a) Each competitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of \$1,500,000 or more, inclusive of options.

(b) Each noncompetitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of \$500,000 or more, inclusive of options.

### **801.602-74 Review requirements for an interagency agreement.**

Contracting officers or other staff must obtain technical review from Acquisition Operations Service staff of the following documents:

(a) Each proposed VA Central Office interagency agreement with another Federal agency to be awarded under authority of the Economy Act, regardless of dollar value. For VA Central Office, only the DSPE or designee may sign an interagency agreement.

(b) Each proposed VA field facility interagency agreement with another Federal agency awarded under authority of the Economy Act involving an anticipated expenditure of VA funds of \$250,000 or more. A VA field facility contracting officer or a contracting officer at the VA National Acquisition Center or the Denver Acquisition and Logistics Center may sign an interagency agreement if the dollar threshold is within the contracting officer's warrant limit.

### **801.602-75 Review requirements—OGC.**

(a) Contracting officers must obtain legal review or concurrence from OGC for the following categories of proposed contractual actions.

(1) Each contract termination, final decision, cure letter, or “show cause” notice proposed under any contract where the total value of the contract is \$100,000 or more. A contracting officer may not sign or release a document subject to this provision until OGC has concurred.

(2) Each dispute or claim from a contractor involving a potential total dollar value of \$100,000 or more. A contracting officer may not sign or release a document subject to this provision until OGC has concurred.

(3) Each proposed contract modification, including any proposed modification to a supply or service contract, where the total value of the modification is \$100,000 or more (e.g., a modification for a \$60,000 increase and a \$50,000 decrease equals \$110,000). Contract modifications issued only to exercise contract options are exempt from this review requirement.

(4) Each proposed contract modification granting a time extension of more than 60 days. The Director, Acquisition Resources Service, may waive the pre-approval requirement under this paragraph for an individual facility when the Director determines that the facility has obtained appropriate “consideration” for past time extensions and the extensions were otherwise appropriately granted.

(5) Each proposed modification increasing the value of a letter contract, regardless of dollar value.

(6) Each proposed contract modification for which the contractor takes exception to the accord and satisfaction language specified by VA. The contracting officer may not execute any proposed contract modification under this requirement until the contracting officer receives OGC’s concurrence in the proposed language.

(7) An assignment of claims (see FAR Subpart 32.8).

(8) Each change or revision to a FAR or VAAR provision or clause or an internal VA-approved clause (e.g., architect/engineer “SP” clauses) not specifically authorized by the regulations.

(9) Each change or revision to a prescribed VA contract form.

(10) A proposed utility construction or connection contract with an antici-

pated contract award value of \$50,000 or more.

(11) Each proposed novation and change-of-name agreement (see 842.1203).

(b) For an action specified in paragraph (a)(1) or (2) of this section, OGC may comment or concur in writing or by telephone.

(c) When a Central Office contracting activity requests legal assistance, the contracting officer will brief OGC on the facts and points of issue to facilitate prompt resolution.

(d) For each solicitation or contract awarded and administered by a Central Office contracting activity, that contracting activity will ask OGC to participate in conferences where legal problems or modifications to contract provisions may be considered and in meetings attended by legal representatives of private parties or other Government agencies. The contracting activity will request assigned procurement counsel participation in drafting correspondence involving significant controversial or sensitive contractual matters.

(e) OGC will prepare any response to the Government Accountability Office (GAO) on GAO bid protests. (See 833.104).

#### **801.602-76 Business clearance review.**

(a) A business clearance review is a technical review of all solicitation and contract award or modification documents immediately prior to contract award or modification over the specified dollar threshold.

(b) All VA contracting officers must obtain a business clearance review prior to award of any contract, task or delivery order, or blanket purchase agreement or execution of any contract modification with a value of \$5 million or more or prior to award of any lease with a value of \$300,000 or more per year.

(c) The dollar threshold in this paragraph is based on the total dollar value of all awards expected under a single solicitation, not the value of each individual award under a solicitation. For example, a solicitation for home oxygen for a Veterans Integrated Service Network (VISN) might result in multiple awards, each of which has a value

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of less than \$5 million. If the total of all awards under that solicitation will exceed \$5 million, the contracting officer must obtain a business clearance review of the entire package, including all proposed individual awards.

### **801.602-77 Processing solicitations and contract documents for legal or technical review—general.**

(a) Under 801.602-70 through 801.602-76, before taking contract action, a contracting officer must ensure that any required legal or technical review or concurrence is complete. Contracting officers shall not award or sign contracts, task or delivery orders, blanket purchase agreements, or contract modifications prior to receipt of the final legal and technical review. Should the contracting officer disagree with the advice provided, the contracting officer shall document in the contract file the reasons therefore and provide a copy of that document to the reviewing Office of Acquisition and Materiel Management office. The contracting officer must fully implement

any accepted review comments as follows:

(1) Before opening the bid or proposal for a competitively awarded contract.

(2) Before executing contract documents for a contract modification or noncompetitive contract award.

(b) The contracting officer must advise potential bidders or offerors of changes made to the solicitation by issuing an amendment. The contracting officer must give bidders and offerors sufficient time for evaluation before the bid or proposal opens.

### **801.602-78 Processing solicitations and contract documents for legal or technical review—Veterans Health Administration field facilities, Central Office (except Office of Construction and Facilities Management), the National Acquisition Center, and the Denver Acquisition and Logistics Center.**

(a) If legal or technical review is required, the documents listed in Table 801.602-78 must be forwarded for review and approval as shown therein.

TABLE 801.602-78

Documents	Person forwarding	Forward to
(1) Proposed solicitations, quotations, contract-related documents, and agreements specified in Table 801.602.71 and in 801.602-72.	One level above the contracting officer.	Appropriate Acquisition Resources Service central or regional office.
(2) Scarce medical specialist and health-care resource solicitations, quotations, and proposed contracts (i.e., contracts to be awarded under the authority of 38 U.S.C. 7409 or 8153) specified in 801.602-73.	One level above the contracting officer.	Director, Enhanced Sharing Program (10FL), VACO.
(3) Interagency agreements specified in 801.602-74 .....	Approving official, contracting officer. Contracting officer .....	DSPE, Acquisition Operations Service. OGC.
(4) Proposed contract modifications, proposed contract modifications for which the contractor takes exception to the accord and satisfaction language VA specifies, assignment of claims, changes to clauses, and proposed utility connection agreements specified in 801.602-75(a)(3) through (a)(7) and in 801.602-75(a)(9) and (a)(10).		
(5) Proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602-75(a)(1) and (a)(2).	Contracting officer .....	Regional Office of the General Counsel.

(b) The director of the Acquisition Resources Service office conducting the technical review has authority to determine whether to forward documents for legal review.

(c) When the contractor takes exception to the accord and satisfaction language VA specifies in a proposed contract modification, the contracting officer must not sign the modification

until OGC concurs with the language proposed by the contractor.

(d) The contracting officer either must fax or send via overnight mail or e-mail all of the relevant documents on proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602-75(a)(1) and (a)(2). OGC will provide concurrence or comments either

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in writing or by telephone. The contracting officer must not sign or release a document to the contractor until OGC concurs.

(e) For any VA contract form subject to legal review under 801.602-75(a)(8), the contracting officer must process the change or revision in accordance with VA Manual MP-1, Part II, Chapter 4 and any supplements to it (<http://www.va.gov/publ/direc/benefits/mp1p2ch4.htm>).

### **801.602-79 Processing solicitations and contract documents for legal or technical review—Veterans Benefits Administration.**

(a) Contracting officer must ensure that proposed solicitations, quotations, contract-related documents, and agreements listed in Table 801.602-71 are reviewed by the Office of Resource Management prior to document execution. The Office of Resource Management must request legal review of all these documents.

(b) Contracting officer must ensure that proposed solicitations or agreements for guidance center and vocational rehabilitation services are reviewed by the Director, Vocational Rehabilitation and Employment Service, if there is an anticipated expenditure of \$100,000 or more.

### **801.602-80 Legal and technical review—Office of Construction and Facilities Management and National Cemetery Administration.**

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Division) contracting officer shall submit all A/E contracts, and all construction contracts, time extensions, and modifications, directly to Office of General Counsel (OGC) for review.

### **801.602-81 Documents required for business clearance reviews.**

When a bid or offer, proposed contract modification, or proposed lease requires a business clearance review under 801.602-76, the contracting officer must forward the required documents (see 801.602-84) and the following information to the appropriate Acquisition Resources Service central or regional office. Office of Construction and Facilities Management and National Cemetery Administration (Construction Support Division) contracting officers shall forward the documents to OGC (025):

(a) The date on which award is anticipated.

(b) Results or efforts made to determine whether the contractor is responsible under FAR Subpart 9.4.

(c) A determination of price reasonableness.

(d) An explanation (e.g., the source selection decision as specified in FAR 15.308) if the contracting officer proposes an award to a contractor other than the low responsible bidder or offeror.

### **801.602-82 Documents to submit for legal or technical review—general.**

Table 801.602-82 specifies the documents that must be submitted when a legal or technical review is required.

TABLE 801.602-82

Action or document subject to review	Documents to submit
(a) Proposed construction contract .....	One copy of each solicitation document, excluding drawings. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.
(b) Proposed solicitation or contract for scarce medical specialist services or health-care resources.	One copy of the solicitation or proposed contract and documents required under VA Manual M-1, Part 1, Chapter 34.
(c) All other proposed solicitations, contracts, and agreements	One copy of each document to be used in the contract solicitation or award, and any other document that supports the proposed procurement action. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.

**801.602-83 Documents to submit for legal or technical review—contract modifications.**

(a) The documents specified in this section related to proposed contract modifications must be submitted to Acquisition Resources Service for review under one or more of the following conditions:

- (1) When the total modification value is \$100,000 or more.
- (2) When the modification is for a time extension of 60 days or more.
- (3) Where the contractor takes exception to VA's accord and satisfaction language.

(b) The contracting officer must submit the following documents for review:

- (1) A draft of the proposed modification prepared on SF 30, Amendment of Solicitation/Modification of Contract, specifying the exact language proposed and describing any change in work, time, or cost.
- (2) A statement describing the need for the changed work with any back-up documentation, including a copy of the general statement of work in the original contract and any existing contract language that will be modified.
- (3) A statement addressing whether the proposed modification is within the original scope of the contract and specifically addressing the facts considered in reaching the conclusion.
- (4) A statement analyzing what necessitated the modification (e.g., a design error, technical changes, or medical center requirements).
- (5) The contracting officer's technical representative's (COTR) technical evaluation of the proposed change.
- (6) A memorandum from the appropriate office indicating that funds are available or a statement concerning the actions that must be taken to secure the required funds.
- (7) The names and telephone numbers of the contracting officer and COTR.
- (8) Costing information including the following:
  - (i) The contractor's cost proposal in the format required by the contract.
  - (ii) The COTR's independent cost evaluation.
  - (iii) The architect/engineer's independent cost evaluation, if applicable and available.

(iv) The contracting officer's Price Negotiation Memorandum under FAR 15.406-3.

(v) Any other relevant costing information, such as independent market research, that VA used or will use as negotiation criteria.

(c) For a proposed modification to an architect/engineer contract, the contracting officer must submit for review each document specified in paragraph (b) of this section and the following additional documents.

(1) A listing of the fees awarded in the original contract and previous modifications.

(2) For a working drawing contract, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(d) For a modification to a construction contract or, where applicable, to an architect/engineer contract, the contracting officer must submit for review a copy of the COTR's mark-up of any drawing that delineates the proposed changed work, including a copy of any pertinent technical specifications. When there is a proposed modification involving numerous changes to drawings and specifications for a VA Central Office project, the drawings and specifications must be available for review in the Office of the Project Director in VA Central Office.

**801.602-84 Documents to submit for business clearance reviews.**

A contracting officer must submit to Acquisition Resources Service (Office of Construction and Facilities Management and National Cemetery Administration contracting officers shall forward the documents to OGC (025)) for review copies of the following documents when a business clearance review is required in accordance with 801.602-76:

- (a) The request for contract action, including a justification of need (i.e., the using service purchase request).
- (b) The solicitation.
- (c) The abstract of the subject bid or offer.
- (d) Any applicable Price Negotiation Memorandum.

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(e) A statement of the contracting officer's rationale for award.

(f) Any applicable justification and approval under FAR 6.303 and 6.304.

(g) Documents relevant to determining whether the contractor is responsible, including:

(1) Verification that the vendor is not suspended, debarred, or on the Department of Health and Human Services Exclusionary List;

(2) Verification that the vendor has filed any required VETS 100 report (not required if the acquisition is for a commercial item); and

(3) For acquisitions exceeding \$10 million, the Equal Employment Opportunity Clearance.

(h) Any applicable approved subcontracting plan.

(i) Documents relevant to price reasonableness (i.e., all documents used to support the contracting officer's determination of price reasonableness).

### **801.602-85 Results of review.**

(a) When the review is complete, the reviewing office will advise the appropriate Central Office activity or contracting officer that the proposal was approved as submitted or provide them with recommended changes. If the Central Office activity is notified, the Central Office activity will forward the information to the contracting officer.

(b) When changes are recommended by technical or legal review staff, if the contracting officer concurs, the contracting officer must take immediate action to amend the document. If the contracting officer does not concur, the contracting officer must discuss the recommended changes with the technical reviewer or the attorney involved and document in the contract file the reasons why the contracting officer is not following the reviewer's recommendations.

(c) Acquisition Resources Service and OGC will complete reviews as expeditiously as possible, with due regard for procurement actions that require an unusually short period for completing the procurement.

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### **801.603 Selection, appointment, and termination of appointment.**

#### **801.603-1 General.**

VAAR 801.690 through 801.690-9 and 801.670 establish the policy and procedures for selecting, appointing, and terminating a contracting officer.

#### **801.603-70 Representatives of contracting officers.**

(a) In carrying out the responsibilities of FAR 1.602-2, the contracting officer may designate another Government employee as COTR to perform the functions in this section and 801.603-71.

(1) Except as indicated in 801.603-71, a designation under this section must be in writing, must define the scope and limitation of the representative's authority, and must be addressed to the COTR with a copy forwarded to the contractor.

(2) The COTR may not re-delegate authority received under this paragraph.

(3) The contracting officer may not authorize a representative to make any commitment or change that will affect the price, quantity, quality, or delivery terms of a contract.

(4) A contracting officer acting within his or her warranted contracting authority must authorize any change to a contract.

(b) A contracting officer may authorize his or her technical representative to do the following:

(1) Furnish technical guidance and advice or generally supervise the work performed under the contract.

(2) Take any action authorized in the contract, such as issuing a delivery order, rejecting an unsatisfactory item, ordering a replacement of an unsatisfactory item (materials or services) or declaring a contractor in default on specific delivery orders.

(i) Except for a contract for blood, the contracting officer may delegate this authority only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state.

(ii) A centralized contract for blood must state that a contracting officer at an ordering office may designate representatives and alternate representatives to place a delivery order subject

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to the same restrictions in paragraph (b)(3) of this section.

(3) Place an oral or other informal delivery order for items such as, but not limited to, bread, milk, and blood against a local indefinite delivery type contract for which there is a blanket purchase arrangement and for which funds have been obligated.

(c) In the administration of research and development contracts, any representative appointed under this section must be acceptable to the contracting officer and the head of the organization concerned.

(d) When the contracting officer intends to designate a representative under this section for a particular solicitation or contract, the contracting officer must include the clause in 852.270-1, Representatives of contracting officers, in the solicitation and contract.

### **801.603-71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.**

(a) Without prior notification to the contractor or vendor, the contracting officer may designate other competent personnel, i.e., COTRs, to represent him or her to receive and inspect supplies, equipment and services at a VA facility. The COTRs may perform duties, as specified by the contracting officer, such as, but not limited to, the following:

(1) Inspect and certify compliance with the quality and quantity requirements of the purchase order or contract.

(2) Inspect supplies and equipment for condition and quantity and accept supplies, equipment, and services, based on quality inspection made by another authorized representative.

(b) The Director, Library Services, VA Central Office, and the Chief, Library Service, at a field facility may act as representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made directly to the library.

### **801.670 Special and limited delegation.**

The authority vested in the Secretary to execute, award, and administer a contract, purchase order, or other agreement for the expenditure of funds to acquire the specific services set forth in 801.670-1 through 801.670-4 is delegated to the SPE. The SPE further delegates this authority to the DSPE and to employees appointed or designated to the positions specified in those sections.

### **801.670-1 Issuing bills of lading.**

The authority to issue bills of lading previously contained in this section is rescinded. Except for individual small package shipments (e.g., United Parcel Service, Federal Express, or United States Postal Service small package shipments), no VA employee may issue a bill of lading or otherwise procure transportation services for goods unless the employee has been delegated authority to do so as a warranted contracting officer under the VA Contracting Officer Certification Program (ref. 801.690). All transportation services for goods, other than for small package shipments, require a bill of lading. Except for individual small package shipments, individuals with only micro-purchase authority may not issue bills of lading or otherwise procure transportation services. The dollar value of the bill of lading issued or transportation services acquired must not exceed the delegated authority of the contracting officer. Candidates for appointment as transportation contracting officers whose delegated authority will be limited to the acquisition of transportation services for goods only shall comply with the Education, Experience, and Training requirements, if any, in Part 102-117 of title 41 Code of Federal Regulations, the Federal Management Regulation, rather than the requirements in 801.690.

### **801.670-3 Medical, dental, and ancillary service.**

(a) When medical, dental, and ancillary services under \$10,000 per authorization are not available from an existing contract or agreement, the following VA officials at VA medical facilities may authorize these services:

(1) The Chief of Staff and the physician assigned the responsibility for the ambulatory care function.

(2) Chief, Medical Administration Service, or the person designated by the facility director to perform medical administration functions.

(b) Forms specified in Part 853 shall be used for ordering services under this paragraph from existing contracts.

(c) The officials named in paragraph (a) of this section may designate one or more of their subordinates to exercise the authority in paragraph (a) of this section.

(d) A designation under this section must be in writing and specifically set forth the scope and limitations of the designee's authority.

#### **801.670-4 National Cemetery Administration.**

The Director of Logistics Management Service, the Centralized Contracting Division, and the Construction Support Division are authorized to procure supplies, equipment and non-personal services (including construction) for National Cemetery Administration (NCA) field facilities and other NCA offices when there is an emergency during which the servicing supply organization cannot be used.

#### **801.670-5 Letters of agreement.**

(a) Letters of agreement shall not be used. The authority previously contained in this section is rescinded.

(b) The VA Office of Inspector General may issue contracts for commercial items, including services, using a letter format (see FAR 12.204(a)), provided billing information and required clauses are included in the contract. If the dollar value of the acquisition will exceed the simplified acquisition threshold, this is a deviation from the requirement to use Standard Form 1449 at FAR 12.204(a).

#### **801.680 Contracting authority of the Inspector General.**

(a) Under section 6(a) of Public Law 95-452 (October 12, 1978), the Inspector General may do the following:

(1) Contract or arrange for audits, studies, analyses, and other services with public agencies and with private persons.

(2) Make payments necessary to carry out the provisions of the Act, to the extent and in amounts provided in advance by appropriations acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may ask the servicing head of the contracting activity for assistance in developing appropriate contract or agreement documents.

(c) The FAR applies to contracts made under paragraph (a) of this section. Such contracts also are subject to provisions of the VAAR that implement and supplement the FAR on matters other than those stemming from or related to delegations of the Secretary's contracting authority. (For example, management controls and approvals specified in subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General.)

#### **801.690 VA's COCP.**

##### **801.690-1 Definitions.**

*Accredited college or university* means a college or university that has been accredited by an accrediting agency recognized by the U.S. Department of Education (see <http://www.ed.gov/admins/finaid/accred/index.html>) or accredited by a foreign government.

*ACEP* means the Acquisition Continuing Education Program, a program to provide VA's acquisition workforce with classroom knowledge to further develop their acquisition skills. The program supports VA personnel in the GS 1102 contracting series, other contracting officers (regardless of General Schedule series), contracting officers' technical representatives, and contracting officers' representatives to ensure that they meet the continuing education requirements mandated by OFPP Policy Letter No. 05-01, Developing and Managing the Acquisition Workforce, dated April 15, 2005 (see [http://www.whitehouse.gov/omb/procurement/policy\\_letters/05-01\\_041505.html](http://www.whitehouse.gov/omb/procurement/policy_letters/05-01_041505.html)) and the OFPP Memorandum dated January 20, 2006, titled The Federal Acquisition Certification in Contracting Program (see [http://www.whitehouse.gov/omb/procurement/acq\\_wk/fac\\_contracting\\_program.pdf](http://www.whitehouse.gov/omb/procurement/acq_wk/fac_contracting_program.pdf)).



*ACM* means the Acquisition Career Manager, who is the Associate Deputy Assistant Secretary for Acquisitions.

*Acquisition Workforce* means those VA employees who are classified as: GS 1102 contract specialists; GS 1105 purchasing agents; contracting officers warranted above the micro-purchase threshold; program and project managers and other significant acquisition-related positions as otherwise identified by the VA Chief Acquisition Officer; contracting officers' technical representatives; and contracting officers' representatives. The acquisition workforce may also include a limited number of employees that perform significant acquisition-related responsibilities, (e.g., employees in the GS-345, GS-346, GS-801, GS-1101, GS-1106, GS-1170, GS-2001, GS-2003, and GS-2005 job series and select program officials).

*Appointment* means the delegation of authority to any VA employee to enter into, administer, or terminate contracts and to make related determinations and findings.

*ATCD* means the Acquisition Training and Career Development Division.

*Certificate of Appointment as Contracting Officer* is a signed certificate on Standard Form 1402 used for the written appointment of contracting officers that states the scope, limitation, and term of the contracting officer's authority.

*CLP* means continuous learning point, as provided in OFPP Policy Letter 05-01. One CLP is generally equivalent to one hour of classroom training.

*COCB* means the Contracting Officers Certification Board, a group of VA officials, listed at 801.690-3(c), who evaluate and recommend to the DSPE individuals for delegation of contracting authority as Level II warrant or Level III warrant (Senior Limited or Unlimited) contracting officers.

*COCP* means the Contracting Officers Certification Program, VA's program established for the selection, appointment, and termination of appointment of contracting officers.

*COQS* means the Contracting Officer Qualification Statement, a document completed by a candidate for a position as contracting officer that accompanies the request for contracting authority. The certified statement in-

cludes information on experience, education, training, and pertinent contracting authority information. The COQS is accompanied by supporting documentation such as training certificates, copies of prior and current warrants, college transcripts, and other relevant information.

*Federal Acquisition Certification* (see OFPP Policy Letter 05-01, paragraph 8) means a certification program developed by the Federal Acquisition Institute and OFPP that generally reflects a Government-wide standard for education, training, and experience leading to the fulfillment of core competencies in acquisition-related disciplines.

*Selection* means the appointment of an employee as a contracting officer. The selection process shall consider the complexity and dollar value of the assigned work, the candidate's experience, training, education, business acumen, judgment, character, reputation, and knowledge of acquisition policies, rules and regulations.

*Skills Currency* means the level of knowledge and abilities that a Level I warrant or higher level warrant contracting officer attains as the result of participating in a minimum of 80 CLPs of continuing education or training every two years. The training is intended to ensure that the employee maintains current acquisition knowledge and skills, as mandated by OFPP Policy Letter No. 05-01 and the OFPP Memorandum dated January 20, 2006, titled The Federal Acquisition Certification in Contracting Program.

*Termination* means the revocation or rescission of an appointment as contracting officer.

#### **801.690-2 General.**

(a) The VA COCP applies to all VA programs except for the appointment of contracting officers under the Inspector General Act (Pub. L. 95-452) and for contracting officers designated in sections 801.670 through 801.670-5. The COCP also applies to VA officials granted authority to enter into sales agreements (see separate guidance under VA's Directives Management System).

(b) A Certificate of Appointment is not required for a contracting officer

designated in 801.670 who exercises special and limited delegations of authority.

(c) Warrant levels are synonymous with the Federal Acquisition Certification in Contracting Program certification levels specified in the OFPP Memorandum dated January 20, 2006, titled “The Federal Acquisition Certification in Contracting Program.” The COCP is based on the following levels and types of authority:

(1) *Level I warrant.* Authority for expenditures at or below the simplified acquisition threshold (see FAR 2.101) for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts (except Federal Supply Schedule (FSS) contracts), within the specified geographical limits of the contracting officer’s warrant. For FSS contracts, Level I warrant authority includes authority for expenditures up to the maximum order threshold of the FSS contract, within the specified geographical limits of the contracting officer’s warrant. This level was formally titled “Basic” and any current Basic Level warrant need not be reissued solely to change the title.

(2) *Level II warrant.* Authority for expenditures at or below \$5,000,000 or as stated on Standard Form 1402 for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts, within the specified geographic limits of the contracting officer’s warrant. This level was formally titled “Intermediate” and any current Intermediate Level warrant need not be reissued solely to change the title.

(3) *Level III (Senior Limited) warrant.* Authority for expenditures at or below the dollar threshold and within the geographical limits specified on the contracting officer’s warrant, Standard Form 1402. This level was formally titled “Senior Limited” and any current Senior Limited Level warrant need not be reissued solely to change the title.

(4) *Level III (Senior Unlimited) warrant.* Authority granted to VA’s contracting officers in contracting activities (e.g., the VA National Acquisition Center, Hines, IL, and Acquisition Op-

erations Service, VA Central Office, Washington, DC) that are charged with meeting Department-wide acquisition needs of VA and its customers. The authority is for expenditures at any dollar level without geographical restriction. This level was formally titled “Senior Unlimited” and any current Senior Unlimited Level warrant need not be reissued solely to change the title.

(5) *Multi-VISN.* Authority at the Level II warrant and Level III (Senior Limited) warrant levels, granted by the DSPE, that permits procurement consolidations among Veterans Health Administration VISNs, Veterans Benefits Administration Area Offices, and other Government agencies that exist outside the contracting officer’s normally assigned geographical area of appointed authority. Multi-VISN authority is generally granted to contracting officers for procurement-specific requirements or to contracting officers who are members of groups or consortiums established for regional contracting initiatives.

(d) *Micro-purchase Level.* Micro-purchase Level authority, not to exceed the micro-purchase threshold (currently \$3,000) (\$2,500 for acquisition of services subject to the Service Contract Act, and \$2,000 for acquisition of construction subject to the Davis Bacon Act) (see FAR 2.101), is separately addressed under VA’s purchase card program. Under that program, the HCA may delegate authority to a VA employee as a purchase card holder through the issuance of VA Form 0242.

#### **801.690-3 Responsibilities under the COCP.**

(a) *DSPE.* The DSPE is responsible for the following:

(1) Administering and overseeing the COCP;

(2) Appointing and terminating Level II warrant and Level III (Senior Limited and Unlimited) warrant contracting officers;

(3) Establishing and developing additional agency-specific training; and

(4) Developing and implementing policy, procedures, and guidance for VA’s acquisition program.

(b) *The Chief, Acquisition Program Management Division.* The Chief, Acquisition Program Management Division, serves as the Executive Secretary to the COCB and is responsible for the following:

- (1) Coordinating requests for contracting authority with the COCB;
- (2) Proceeding accordingly with appropriate action to carry out the decisions of the DSPE and the COCB;
- (3) Maintaining individual records on the appointment and termination of appointment of contracting officers. Records on contracting officers include HCA certifications and qualification statements, Certificates of Appointment, and other supporting documentation used to grant authority; and
- (4) Ensuring appropriate and timely disposition of records through the Office of Acquisition and Materiel Management's Records Control Officer.

(c) *The COCB.* (1) The Director, Acquisition Resources Service, will chair the COCB.

(2) COCB membership consists of:

- (i) The Chief, Acquisition Program Management Division; and
- (ii) The Chief, Acquisition Training and Career Development Division (ATCD).

(d) *HCA.* HCAs are responsible for the following:

- (1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services required by the activity to which the HCA is assigned;
- (2) Establishing adequate controls to ensure compliance with applicable laws and regulations;
- (3) Appointing or terminating the appointment of contracting officers at the Micro-purchase Level and Level I warrant level within their assigned activity;
- (4) Establishing procedures and maintaining records for the appointment and termination of appointment of purchase card holders at the Micro-purchase Level and Level I warrant contracting officers. Records maintained on contracting officers shall include the contracting authority, certification and qualification statements;
- (5) Recommending to the DSPE the appointment or termination of appointment of contracting officers at

the Level II warrant and Level III (Senior Limited or Unlimited) warrant levels of authority, certifying the candidate's qualifications, and justifying the organizational need;

(6) Ensuring that all GS 1102 contract specialists and other contracting officers meet the minimum core training and continuing education requirements; and

(7) Certifying that the assigned acquisition workforce meets the minimum training, education, and skills currency requirements prescribed by OFPP and the DSPE.

(e) *VA Acquisition Workforce.* All employees identified as members of VA's acquisition workforce (see 801.690-1) are responsible for maintaining records that include certificates of acquisition training, continuing education, college transcripts, work experience, and other supporting documentation needed to substantiate successful completion of all warrant requirements. These employees shall enroll in the Acquisition Career Management Information System (ACMIS), the data system that serves as the repository of required information on VA's acquisition workforce.

#### 801.690-4 Selection.

(a) The HCA may appoint Level I warrant contracting officers or submit written requests to the DSPE for appointment of Level II warrant or Level III (Senior Limited or Unlimited) warrant contracting officers. A VA official one level above the HCA may submit a written request to the DSPE for the appointment of an HCA as a contracting officer.

(b) Appointment can only be requested in those circumstances where it can be demonstrated that a valid organizational need exists. In making this assessment and justification, the HCA will consider the complexity of the work, volume of actions, organizational structure, and human resource management actions and forecasts, such as rates of retirement, reassignment, and retention.

(c) The request shall consist of the following:

- (1) Justification for requesting contracting authority to be granted;

(2) Certification that the candidate's experience and training meet the established minimum qualifications for the requested contracting authority;

(3) Certification that the candidate has a satisfactory-or-above performance rating;

(4) Certification that the candidate maintains high standards of conduct and avoids apparent or actual conflicts of interest, and

(5) Certification that the candidate has appropriate working knowledge of the FAR, VAAR, and other applicable laws, regulations, policies and procedures.

(d) The accompanied COQS shall include the following information:

(1) Candidate's name, position title, series, grade, and location;

(2) Candidate's relevant acquisition or business-related experience that reflects the required number of years of progressive work assignments leading to broader technical abilities;

(3) Education background, including number of acquisition or business-related college credits;

(4) List of core training requirements or equivalent courses that have been successfully completed;

(5) List of continuing education requirements successfully completed within the last two years;

(6) List of current and prior warrant authorities, limitations, and information on termination and cause for termination;

(7) List of other acquisition related activities or memberships;

(8) Certification that the statement is accurate and complete to the best of the candidate's knowledge; and

(9) Attached copies of acquisition or business-related training certificates, course certificates, and diplomas, transcripts, or degrees from accredited colleges or universities.

#### **801.690-5 Requirements for contracting authority.**

(a) Effective January 1, 2007, no individual, regardless of job series, may be issued a new contracting officer warrant above the micro-purchase threshold unless the individual meets the requirements for Federal Acquisition Certification (Certification) for the applicable Level I, II, or III warrant level

as specified in OFPP Policy Letter 05-01 and the OFPP Memorandum dated January 20, 2006, titled "the Federal Acquisition Certification in Contracting Program." A new contracting officer warrant is defined in OFPP Policy Letter 05-01 as a warrant issued for the first time at a department or agency. For contracting officers warranted before January 1, 2007, certification will not be required to retain their existing warrants, but will be required before higher level warrants can be issued. Certification includes minimum requirements for education, training, and experience. A candidate for a warrant must have at least a satisfactory-or-above performance rating during the most recent performance period.

(b) For contracting officer warrants issued prior to January 1, 2007, the minimum requirements for qualifying as a contracting officer previously specified in VA regulation and other internal VA guidance shall apply.

(c) *Multi-VISN.* The HCA shall obtain written or e-mail concurrence from the HCAs of the other affected VISNs or Area Offices when requesting Multi-VISN contracting authority.

(d) *Training.* (1) Contracting officers and non-warranted contract specialists shall complete the required coursework and on-the-job training needed to possess the established competencies listed in OFPP's Federal Acquisition Institute Contract Specialist Training Blueprints (<http://www.fai.gov/policies/contract.htm>).

(2) The Chief, ATCD, oversees the ATP.

(3) Training course equivalency will be determined and approved by the Chief, ATCD. Candidates should contact the Chief, ATCD, for an equivalency determination and must furnish any information or evidence necessary to support the request. Appeals of decisions may be made to the VA ACM and the decisions of the ACM shall be final.

(e) *Skills Currency.* (1) Contracting officers and non-warranted contract specialists who have completed the core training requirements shall obtain a minimum of 80 CLPs of continuing education or training every two fiscal years to stay abreast of current acquisition knowledge and skills as mandated by OFPP. The HCA (for Level I

warrant contracting officers) and the Chief, ATCD (for Level II warrant and Level III warrant contracting officers), shall make written determinations every October 1 for each warranted contracting officer on whether the required CLPs, as specified in OFPP guidance, were completed during the two prior fiscal years. The HCA shall assign CLP values to training taken by Level I warrant contracting officers for training that does not have pre-assigned CLP or continuing education unit (CEU) values assigned to the training by the provider. The Chief, ATCD, shall assign CLP values to training taken by Level II warrant and Level III warrant contracting officers for training that does not have pre-assigned CLP or CEU values assigned to the training by the provider. Values shall be assigned based on guidance provided by OFPP and the combined efforts of the Federal Acquisition Institute and the Defense Acquisition University. Questions regarding the CLP or CEU values assigned to training shall be resolved by the ACM.

(2) The Chief, ATCD, is responsible for the management of the ACEP, the program that assists contracting officers and contract specialists to meet the training requirements.

(3) An expiring warrant will not be re-issued if the contracting officer has not met the continuing education or training requirement.

(f) *Education.* (1) The 24 business-related college credits shall be in any combination of the following fields of study at an accredited college or university: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(2) The HCA will make the final determination whether a course is accepted as business-related for the purpose of granting Level I warrant authority. The Chief, ATCD, will make the final determination whether a course is accepted as business-related for the purpose of granting Level II warrant or Level III warrant contracting authority.

(3) American Council on Education (ACE) credits are not considered as college credits until they are converted

and included on a transcript from an accredited college or university.

(g) *Grandfather provision for the education requirement.* (1) VA contracting officers, regardless of grade level, who currently hold Level I, Level II, or Level III (Senior Limited or Unlimited) warrants are considered as having met the Experience, Education, and Training requirements for their respective warrant levels. This includes transfers or laterals to other VA contracting activities with similar geographical restrictions. Contracting officers who are promoted up to a GS-12 can maintain their current warrant level authority.

(2) This Grandfather provision does not cover new VA employees, current VA employees who are not warranted, former VA employees who held contracting authority at their previous Federal Government agencies or VA positions, or VA employees whose warrants have been rescinded or have expired. VA contracting officers who are promoted to GS 13-and-above will no longer be covered by this Grandfather provision and, therefore, must meet the current Experience, Education, and Training requirements for the specific warrant authority that they currently hold or to which they wish to be appointed. Contracting officers requesting a higher level warrant (e.g., from Level I warrant to Level II warrant or from Level III (Senior Limited) warrant to Level III (Senior Unlimited) warrant) must also meet the current Experience, Education, and Training requirement for the specific warrant authority requested.

(3) This Grandfather provision for retaining a contracting officer's current warrant authority is voided if the contracting officer does not fully meet the minimum Skills Currency requirement prior to warrant expiration or when the warrant authority is suspended or revoked. The contracting officer will then need to meet all of the current warrant prerequisites before a new warrant can be issued or before the suspended or revoked warrant can be reinstated.

(h) The training requirements for contracting officers whose delegated authority is limited to the acquisition of transportation services, as provided

## **801.690-6**

in part 102-117 of title 41 Code of Federal Regulations, the Federal Management Regulation, shall be as specified therein.

### **801.690-6 Appointment.**

(a) Only the DSPE (for Level II and Level III (Senior Limited or Unlimited) warrants and the respective HCA (for Level I warrants) may sign the Certificate of Appointment as Contracting Officer. HCAs are authorized to grant Micro-purchase Level and Level I warrant contracting authority up to the thresholds specified for these authorities at 801.690-2(c). The HCA may recommend a candidate to the DSPE for appointment as a Level II warrant or Level III warrant contracting officer. Only the DSPE may grant Level II warrant, Level III (Senior Limited or Unlimited) warrant, and Multi-VISN authority.

(b) All Certificates of Appointment as Contracting Officers and other written documents must clearly state any limitations or restrictions on the authority.

(c) The Privacy Act of 1974 applies to the information collected during contracting officer selection and appointment.

### **801.690-7 Termination.**

(a) The DSPE (for all warrant levels) or HCA (for Micro-purchase Level and Level I warrants) may revoke or rescind the appointment of a contracting officer at any time. HCAs may submit a recommendation to revoke or rescind the appointment of a contracting officer's Level II warrant or Level III (Senior Limited or Unlimited) warrant to the DSPE. Revocation may be based on the following circumstances:

(1) There is no longer a need for the appointment;

(2) There has been a personnel action such as a resignation, retirement, transfer;

(3) Unsatisfactory performance;

(4) Alleged official misconduct pending criminal or administrative investigations;

(5) Failure to meet training or skills currency requirements;

(6) A contracting officer taking an action that exceeds his or her authority;

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(7) Blatant disregard for adhering to acquisition regulations, policies and procedures; or

(8) Situations similar to those in paragraphs (a)(1) through (7) of this section that may require remedial action.

(b) The HCA should discuss a termination of contracting authority for cause with the servicing Human Resource Management Office to determine the impact, if any, on the contracting officer's continued employment.

(c) All changes in the status (e.g., departure, name, position, or grade change) of a micro-purchase cardholder or Level I warrant holder shall be reported in writing by the individual's supervisor to the HCA within five workdays of occurrence. All changes in the status of a Level II warrant or Level III (Senior Limited or Unlimited) warrant holder shall be reported in writing by the HCA to the DSPE within five workdays of occurrence. Level II warrants or Level III (Senior Limited or Unlimited) warrants that are terminated, rescinded, or superseded should be returned to the Director, Acquisition Resources Service (049A5), citing the exact reason for the termination, rescission, or supersession.

### **801.690-8 Interim appointment provisions.**

(a) To ensure availability of procurement support, an interim appointment may be granted for a limited period of time when a candidate does not fully meet the minimum qualifications for Experience, Education, or successful completion of all acquisition Training requirements in previous VA regulations or VA internal guidance, if applicable, or as provided in the OFPP Memorandum dated January 20, 2006, titled "the Federal Acquisition Certification in Contracting Program." All interim appointments made after January 1, 2007, for individuals who do not meet the minimum Experience, Education, or Training requirements for Levels I through III warrants shall be signed by the SPE or, if so delegated, the ACM, without power to redelegate, as provided in the OFPP Memorandum

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dated January 20, 2006, titled “the Federal Acquisition Certification in Contracting Program.”

(1) In a request for an interim appointment, the HCA must include the information required by 801.690-4 on the candidate's training, experience, performance, and education, and a justification for the interim appointment.

(2) The HCA must ensure that the candidate with interim appointment meets the minimum Experience, Education, and Training requirements within the time specified on the warrant.

(3) A contracting officer with interim appointment should successfully complete all remaining required courses or equivalent courses within the time specified on the warrant.

(b) At the HCA's written request, a permanent warrant may be issued during the interim appointment period when the contracting officer has satisfactorily met the requirements. The appropriate documentation (copies of course certificates) must be submitted with the HCA's request.

(c) An interim appointment may be appropriate for instances such as organizational changes or sudden, extreme, and unexpected increases in workload complexity and/or volume.

(d) Interim appointments will not be granted under the following circumstances:

(1) To a candidate who is warranted but does not meet the Education or Training requirements for higher level (e.g., from Level I warrant to Level II warrant) contracting authority (unless waived by the SPE);

(2) To a candidate who does not have a current record of satisfactory-or-above performance; or

(3) To a contracting officer whose authority has expired and who has not met the continuing education requirement during the two preceding years.

(e) Generally, an interim appointment may not exceed one year.

### 801.690-9 Distribution of Certificates of Appointment.

(a) The DSPE or HCA will issue an original Certificate of Appointment as Contracting Officer to the appointed candidate, who must display the Certificate at his or her duty station.

(b) The HCA shall file a copy of the warrant in the delegation of authority file.

(c) The contracting officer must furnish a copy to the respective fiscal activity.

(d) Each Certificate will be serially numbered, reflecting the facility number, the year of issuance (e.g., facility number—year of issuance (2 digits)—sequential number, 560-04-10), and have an effective and expiration date.

### 801.695 VA's Appointment of HCAs Program.

#### 801.695-1 Policy.

(a) VA's policy is to have a minimum number of HCAs. Generally, there will be one HCA per VISN, other major VA organizational element, or major acquisition organization. The authority vested in the Secretary to select, appoint, and terminate HCAs is delegated to the SPE and is further delegated from the SPE to the DSPE.

(b) Under the FAR at 1.601(a) and 2.101, an HCA is a senior level position. The official who occupies this position should have the education, training, and experience necessary to make the decisions required of an HCA.

(c) Except as provided in the FAR, an HCA may delegate his or her authority to other individuals within the HCA's acquisition activity. Such delegations must be in writing and must set forth the specific limitations on the designee's authority. The delegation may include authority to appoint a contracting officer at the Micro-purchase Level or the Level I warrant levels.

#### 801.695-2 Procedures for appointment of HCAs.

An HCA must be appointed in writing by the DSPE and in accordance with internal VA policy. The written delegation must state any limitation on the HCA's authority, other than a limitation contained in an applicable law or regulation.

#### 801.695-3 Authority of the HCA.

(a) The HCA has overall responsibility for managing the procurement program assigned to the activity.

(b) The HCA's level of contracting authority, if any, shall be specified in the HCA's appointment letter.

(c) The HCA has the authority to appoint and terminate contracting officers with authority to conduct procurements of up to and including the simplified acquisition threshold or the maximum order threshold or limitation for orders placed against Federal Supply Schedule contracts, and to terminate such appointments (Micro-purchase Level and Level I warrant appointments).

## PART 802—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 802.1—Definitions

#### 802.101 Definitions.

*A/E* means architect/engineer.

*Chief Acquisition Officer* means the Assistant Secretary for Management.

*COTR* means Contracting Officer's Technical Representative or Contracting Officer's Representative.

*DSPE* means the Deputy Senior Procurement Executive, who is also the Associate Deputy Assistant Secretary for Acquisitions. The DSPE must be career member of the Senior Executive Service.

*FAR* means the Federal Acquisition Regulation.

*GAO* means the Government Accountability Office.

*HCA* means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA's Appointment of HCAs Program (see 801.695).

*OGC* means the Office of the General Counsel.

*Resident Engineer* has the same meaning as contracting officer's technical representative or contracting officer's representative (see 852.270–1).

*Service-disabled veteran-owned small business concern (SDVOSB)* has the same meaning as defined in the Federal Acquisition Regulation (FAR) part

2.101, except for acquisitions authorized by 813.106 and subpart 819.70. These businesses must then be listed as verified on the Vendor Information Pages (VIP) database at <http://www.vetbiz.gov>. In addition, some businesses may be owned and controlled by a surviving spouse.

*Small business concern* has the same meaning as defined in FAR 2.101.

*SPE* means the Senior Procurement Executive who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. The SPE is responsible for the management direction of the VA acquisition system. The SPE may further delegate authority to the DSPE.

*Surviving spouse* means an individual who has been listed in the Department of Veterans Affairs' (VA) Veterans Benefits Administration (VBA) database of veterans and family members. To be eligible for inclusion in the VetBiz.gov VIP database, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability rating or the veteran died as a direct result of a service-connected disability.

*VA* means the Department of Veterans Affairs.



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*VAAR* means the Department of Veterans Affairs Acquisition Regulation.

*Vendor Information Pages (VIP)* means the VetBiz.gov Vendor Information Pages database at <http://www.vetbiz.gov>.

*Veteran-owned small business concern (VOSB)* has the same meaning as defined in FAR 2.101, except for acquisitions authorized by 813.106 and 819.70. These businesses must then be listed as verified in the VetBiz.gov VIP database.

*VISN* means Veterans Integrated Service Network, an integrated network of VA facilities that are focused on pooling and aligning resources to best meet local needs in the most cost-effective manner and provide greater access to care.

[73 FR 2717, Jan. 15, 2008, as amended at 74 FR 64629, Dec. 8, 2009; 83 FR 16208, Apr. 16, 2018; 85 FR 60074, Sept. 24, 2020]

## PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 803.1 [Reserved]

### Subpart 803.2—Contractor Gratuities to Government Personnel

Sec.

803.203 Reporting suspected violations of the Gratuities clause.

803.204 Treatment of violations.

### Subparts 803.3—803.4 [Reserved]

### Subpart 803.5—Other Improper Business Practices

803.570 Commercial advertising.

803.570-1 Policy.

803.570-2 Contract clause.

### Subparts 803.6—803.8 [Reserved]

### Subpart 803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

803.1103 Procedures.

### Subpart 803.70 [Reserved]

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C.1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 803.1 [Reserved]

### Subpart 803.2—Contractor Gratuities to Government Personnel

#### 803.203 Reporting suspected violations of the Gratuities clause.

(a) Any VA employee must report a suspected violation of the Gratuities clause to the contracting officer or a higher level VA official.

(b) The report must identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(c) The contracting officer or higher level official must supplement the file with appropriate information and promptly forward the report to the DSPE, with copies to the VA Office of the Inspector General and the Assistant Secretary for Management.

#### 803.204 Treatment of violations.

In providing the notice and hearing required by FAR 3.204, the following applies—

(a) The SDO shall determine whether or not a violation of the Gratuities clause, 52.203-3 has occurred and what action will be taken under FAR 3.204(c).

(c) When the SDO determines that a violation has occurred and that debarment is being considered, he or she shall follow procedures at 809.406-3.

[83 FR 16208, Apr. 16, 2018]

### Subparts 803.3—803.4 [Reserved]

### Subpart 803.5—Other Improper Business Practices

#### 803.570 Commercial advertising.

#### 803.570-1 Policy.

VA policy prohibits contractors from making references in its commercial advertising to VA contracts in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent

## **803.570-2**

of this policy is to preclude the appearance of bias toward any product or service.

[83 FR 16208, Apr. 16, 2018]

### **803.570-2 Contract clause.**

The contracting officer shall insert the clause at 852.203-70, Commercial advertising, in solicitations and contracts expected to equal or exceed the micro-purchase threshold.

## **Subparts 803.6—803.8 [Reserved]**

## **Subpart 803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

### **803.1103 Procedures.**

(a) By use of the contract clause at 52.203-16, Preventing Personal Conflicts of Interest, the contracting officer shall require each contractor whose employees perform acquisition functions closely associated with inherently Governmental functions to obtain from each covered employee a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract. See FAR 3.1103(a)(2)(iii).

[83 FR 16208, Apr. 16, 2018]

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## **Subpart 803.70 [Reserved]**

## **PART 804—ADMINISTRATIVE AND INFORMATION MATTERS**

## **Subpart 804.1 [Reserved]**

## **Subpart 804.13—Personal Identity Verification**

Sec.

804.1303 Contract clause.

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

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

## **Subpart 804.1 [Reserved]**

## **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.

[85 FR 36349, June 16, 2020]

## SUBCHAPTER B—ACQUISITION PLANNING

### PART 805 [Reserved]

### PART 806—COMPETITION REQUIREMENTS (Eff. until 11-1-21)

#### Subpart 806.3—Other Than Full and Open Competition

Sec.

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-7 Public interest.

806.304 Approval of the justification.

#### Subpart 806.5—Competition Advocates

806.501 Requirement.

806.570 Planning requirements.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

EFFECTIVE DATE NOTE: At 86 FR 54116, Sept. 30, 2021, part 806 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text follows this part.

#### Subpart 806.3—Other Than Full and Open Competition

**806.302 Circumstances permitting other than full and open competition.**

**806.302-5 Authorized or required by statute.**

(a) Full and open competition need not be provided for when awarding:

(1) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302. (38 U.S.C. 7409)

(2) Contracts for health-care resources negotiated under the authority of 38 U.S.C. 8153, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302, including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and

approval requirements of FAR 6.303 and 806.304 do not apply to such contracts or agreements. (38 U.S.C. 8153)

(3) Contracts for health-care resources, negotiated under the authority of 38 U.S.C. 8153, that are not acquired under the authority of paragraph (a)(2) of this section, but only when the procurement is conducted in accordance with part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts and agreements conducted on a sole-source basis. (38 U.S.C. 8153)

(b) Various sections of title 38 U.S.C. authorize the Secretary to enter into certain contracts and certain types of contracts without regard to any other provisions of law. When the contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 253(c)(5) and the following authorities:

(1) For contracts for orthopedic and prosthetic appliances and related services including research, cite 38 U.S.C. 8123. (38 U.S.C. 8123)

(2) For contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service, cite 38 U.S.C. 7802. (38 U.S.C. 7802)

(3) For contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee, cite 38 U.S.C. 8109(f). (38 U.S.C. 8109)

(4) For contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources, cite 38 U.S.C. 8122(c). (38 U.S.C. 8122)

(5) For contracts or agreements with public or private agencies for services of translators, cite 38 U.S.C. 513. (38 U.S.C. 513)

(c) Except for an acquisition under paragraph (a)(2) of this section, the contracting officer must provide a justification under FAR 6.303 and obtain an approval under 806.304 for each acquisition described in this section.

#### **806.302-7 Public interest.**

(a) When the contracting officer uses 41 U.S.C. 253(c)(7) to support a contract award using other than full and open competition, the contracting officer must prepare a Determination and Finding (D&F) under FAR 1.7 and a justification under FAR 6.303. The D&F must be signed by the Secretary.

(b) The contracting officer must submit the D&F and justification through the HCA to the Agency Competition

Advocate for signature by the Secretary. The submission must include the date the contracting officer expects to award the contract.

(c) VA must notify Congress 30 days before the expected award date. The Agency Competition Advocate is responsible for preparing this notice. The contracting officer may not award the contract until notified by the Agency Competition Advocate.

#### **806.304 Approval of the justification.**

(a) For a justification other than a class justification specified in FAR 6.304(c), Table 806.304-1 provides the authorities who may approve a justification:

TABLE 806.304.1

Proposed contract amount	Approving authority	Alternate approving authority
(1) Not exceeding \$500,000 .....	The contracting officer, as provided in FAR 6.304(a)(1).	Not applicable.
(2) Over \$500,000 but not exceeding \$10 million.	Contracting Activity Competition Advocate (see 806.501(b) and (c)) unless that Advocate is the contracting officer.	The Agency Competition Advocate (see 806.501(a)).
(3) Over \$10 million but not exceeding \$50 million.	Agency Competition Advocate .....	Not applicable.
(4) Over \$50 million .....	Senior Procurement Executive (see 802.100).	Not applicable.

(b) For class justifications specified in FAR 6.304(c), the contracting officer must obtain the approval of the Agency Competition Advocate for all proposed justifications with an estimated value of up to \$50 million. The contracting officer must obtain the approval of the SPE for all proposed justifications with an estimated value of more than \$50 million.

### **Subpart 806.5—Competition Advocates**

#### **806.501 Requirement.**

(a) The Associate Deputy Assistant Secretary for Acquisitions is the Agency Competition Advocate. The Agency Competition Advocate may further delegate authority to other VA officials in VA Administrations and staff offices.

(b) The Executive Director and Chief Operating Officer, National Acquisition Center, is the Contracting Activity Competition Advocate for the Center.

(c) Each HCA (see subpart 802.1) will serve as the Contracting Activity Competition Advocate in all other cases.

(d) The authority in paragraphs (b) and (c) of this section is not delegable.

#### **806.570 Planning requirements.**

(a) Each Contracting Activity Competition Advocate must do the following:

(1) Develop a Competition Plan.

(2) Incorporate the Plan in the internal operating procedures of the facility or organization in which the contracting activity is located.

(3) Obtain the endorsement and support of the facility or staff office director.

(4) Ensure that the services and offices that the contracting activity supports understand the plan.

(b) At a minimum, the Competition Plan must include the following:

(1) Approval requirements for other than full and open competition specified in FAR 6.304.

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(2) A description of the synopsis requirements in FAR subpart 5.2 to ensure that responsible staff fully understand the advance procurement planning that is required.

(3) A description of how to integrate the Competition Plan into advance procurement planning.

(4) A listing of obstacles to competition and a proposal for overcoming them.

(5) A method for increasing cost competition for contracts and competition on other significant factors.

EFFECTIVE DATE NOTE: At 86 FR 54116, Sept. 30, 2021, part 806 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text is set forth below:

### **PART 806—COMPETITION REQUIREMENTS (Eff. 11-1-21)**

Sec.

806.004-70 Definition.

#### **Subpart 806.1—Full and Open Competition**

806.102 Use of competitive procedures.

#### **Subpart 806.2—Full and Open Competition After Exclusion of Sources**

806.203 Set-asides for small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

#### **Subpart 806.3—Other Than Full and Open Competition**

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.

806.302-571 Authorized or required by statute—VA unique authorities.

#### **Subpart 806.5—Advocates for Competition**

806.501 Requirement.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 U.S.C. 3304; and 48 CFR 1.301 through 1.304.

#### **806.004-70 Definition.**

As used in this part—  
*Health-care resources* has the same definition as that provided in 873.102.

#### **Subpart 806.1—Full and Open Competition**

##### **806.102 Use of competitive procedures.**

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules

(FSS) are considered competitive when awarded in accordance with the procedures specified in FAR part 8 and this part.

#### **Subpart 806.2—Full and Open Competition After Exclusion of Sources**

##### **806.203 Set-asides for small business concerns.**

(c) Subparts 819.5 and 819.70 prescribe the policies and procedures that shall be followed with respect to set-asides for small business and Veteran-owned small business concerns.

##### **806.270 Set-asides for verified Veteran-owned small businesses.**

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127-8128), contracting officers shall set aside solicitations in accordance with subpart 819.70 and the VA Rule of Two for Vendor Information Pages (VIP) verified service-disabled Veteran-owned small businesses (SDVOSBs) first, then Veteran-owned small businesses (VOSBs) (see 819.7005 and 819.7006). (38 U.S.C. 8127-8128)

(b) The requirement in this section to set aside procurements for VIP verified SDVOSBs and VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts. (38 U.S.C. 8127-8128)

#### **Subpart 806.3—Other Than Full and Open Competition**

##### **806.302 Circumstances permitting other than full and open competition.**

##### **806.302-5 Authorized or required by statute.**

##### **806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.**

(a) *Sole source awards made to a verified SDVOSB or VOSB.* Full and open competition need not be provided for when awarding a sole source contract under paragraph (b) or (c) of this section, to a verified SDVOSB or VOSB in accordance with 819.7007 or 819.7008, respectively, as authorized. Contracts awarded using the authority in this paragraph (a) shall be supported by the applicable justification and approval requirements of FAR 6.302-5(c)(2)(ii), 6.303, and 6.304.

(b) *Sole source awards below the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under the authority in this paragraph (b) to a VIP verified SDVOSB first, then VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition

threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) *Sole source awards above the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a VIP verified SDVOSB first, then VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed \$5 million; and

(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

**806.302-571 Authorized or required by statute—VA unique authorities.**

(a) *Authority.* (1) *Citation:* 41 U.S.C. 3304(a)(5). Contracting officers shall also cite the specific authorities in paragraph (b) of this section for the statutes related to the products and services procured.

(2) Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.

(b) *Application.* The following products and services are authorized to be acquired from a specified source:

(1) *Prosthetic appliances and services.* Contracting activities may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as determined to be proper, without regard to any other provision of law. (38 U.S.C. 8123)

(2) *Commercial health-care resources, the use of medical equipment or space, or research, and acquired from an institution affiliated with the Department of Veterans Affairs.* Contracting activities may procure health care resources, including resources from medical practice groups and other approved entities associated with affiliated institutions, blood banks, organ banks, or research centers from an institution affiliated with VA in accordance with 38 U.S.C. 7302. Acquisition of resources from medical practice groups and other entities shall be approved when determined by the contracting activity to be legally associated with affiliated institutions in accordance with 38 U.S.C. 7302. The justification and approval requirements of FAR 6.303 and paragraph (c) of this section do not apply. (38 U.S.C. 8153(a)(3)(A))

(3) *Commercial health-care resources, the use of medical equipment or space, and is not to be acquired from an entity described in paragraph (b)(2) of this section.* Contracting activities

may procure health care resources from a non-affiliated institution in accordance with the simplified procedures prescribed in part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(B))

(4) *Commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution described in paragraph (b)(2) of this section and to be conducted on a sole source basis.* The authority in this paragraph (b)(4) applies if not acquired from an affiliated institution in accordance with part 873. The justification and approval requirements of FAR 6.303 shall apply. (38 U.S.C. 8153(a)(3)(C)–(D))

(c) *Written justifications and approvals.* Contracts awarded using an authority in this section, with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

(d) *Citation of specific authorities.* When a contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 3304(a)(5) and the following authorities that apply, in the written justifications and approvals as required by FAR 6.303 and 6.304:

(1) *Contracts for scarce medical specialist services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7409.) Contracting officers may enter into contracts with:

(i) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing;

(ii) Clinics; and

(iii) Any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel. (38 U.S.C. 7409)

(2) *Contracts or agreements to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7802(f).) Contracts or agreements may be entered into without regard to 41 U.S.C. 6101(b) through (d).

(3) *Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b).* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8109(f).) Contracts or leases may be entered into provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee.

(4) *Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C.

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8122(c).) Contracts may be entered into when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources.

(5) *Contracts or agreements with private or public agencies or persons for translator services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 513.)

### Subpart 806.5—Advocates for Competition

#### 806.501 Requirement.

The Associate Executive Director, Office of Procurement Policy, Systems and Oversight (AED, PPSO) is designated as the VA Advocate for Competition for the agency. The AED, PPSO may further delegate the authority in this section to appoint an alternate agency advocate for competition and shall designate procuring activity advocates for competition in accordance with FAR 6.501. A complete list of VA procuring activity advocates for competition can be found at <https://www.va.gov/oal/business/pps/competition-advocates.asp>.

## PART 807—ACQUISITION PLANNING

### Subpart 807.1—Acquisition Plans

Sec.

807.103 Agency-head responsibilities.

### Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

807.304-77 Right of first refusal.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 807.1—Acquisition Plans

#### 807.103 Agency-head responsibilities.

The authority to prescribe procedures in FAR 7.103 is delegated to the SPE and is further delegated to the DSPE.

### Subpart 807.3—Contractor Versus Government Performance

#### 807.300 Scope of subpart.

This subpart prescribes the use of VAAR clause at 852.207-70, Report of employment under commercial activities, when contracting for commercial

services under Office of Management and Budget (OMB) Circular A-76 or VA's cost comparison process. The cost comparison process is used by VA to determine whether to use commercial or Government resources to provide commercial services.

### 807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal of Employment clause specified in FAR 52.207-3, the contracting officer must include the clause "Report of Employment Under Commercial Activities" at 852.207-70 in all cost comparison solicitations where VA personnel may be displaced. This clause is primarily intended to verify that the contractor is meeting its obligation to provide Federal workers who are adversely affected by the contract award and who are qualified for the jobs the first opportunity for employment openings created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. To implement the clause, the contracting officer (or COTR) must first obtain a list of Federal personnel who will be adversely affected as a result of the anticipated contract from the servicing Human Resources Service office. The list should be requested as soon as a preliminary determination is made to contract out a function subject to OMB Circular A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

## PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

808.002 Priorities for use of mandatory Government sources.

### Subpart 808.4—Federal Supply Schedules

808.402 General.

808.405-2 Ordering procedure for services requiring a statement of work.

### Subpart 808.6—Acquisition From Federal Prison Industries, Inc. (FPI)

808.603 [Reserved]

## 808.002

### Subpart 808.8—Acquisition of Printing and Related Supplies

808.802 Policy.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### 808.002 Priorities for use of mandatory Government sources.

(a)—(b) [Reserved]

(c) *Eligible Beneficiaries.* (1) A contracting officer may authorize an acquisition from the Veterans Canteen Service or a commercial source when a VA healthcare official (e.g., social worker, physician) determines that personal selection of shoes, clothing, and incidentals will result in a therapeutic benefit to an eligible beneficiary.

(2) The contracting officer must cite Federal Prison Industries, Inc., clearance No. 1206 in the purchase document for any purchase from a commercial source of dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A.

[84 FR 29390, June 24, 2019]

EDITORIAL NOTE: At 84 FR 29390, June 24, 2019, §808.002 was amended, expiring July 1, 2021; however, the amendment expiration could not be completed because a section heading is required.

### Subpart 808.4—Federal Supply Schedules

#### 808.402 General.

The Executive Director and Chief Operating Officer, VA National Acquisition Center, advertises, negotiates, awards, administers, and issues the Federal Supply Schedules for Federal Supply Classification Groups 62, 65, and 89 and for cost-per-test services under Group 66.

#### 808.405–2 Ordering procedure for services requiring a statement of work.

When placing an order or establishing a BPA for supplies or services requiring a statement of work, the ordering activity, when developing the statement of work and any evaluation criteria in addition to price, shall ad-

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here to and apply the evaluation factor commitments at 815.304–70.

[74 FR 64630, Dec. 8, 2009]

### Subpart 808.6—Acquisition From Federal Prison Industries, Inc. (FPI)

808.603 [Reserved]

### Subpart 808.8—Acquisition of Printing and Related Supplies

#### 808.802 Policy.

The Director, Publications Staff, Office of Acquisition and Materiel Management, VA Central Office, is the Central Printing Authority for VA (see FAR 8.802(b)).

## PART 809—CONTRACTOR QUALIFICATIONS

### Subpart 809.1—Responsible Prospective Contractors

Sec.

809.106 Preaward surveys.

809.106–1 Conditions for preaward surveys.

#### Subpart 809.2 [Reserved]

### Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

809.402 Policy.

809.403 Definitions.

809.405 Effect of listing.

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809.406 Debarment.

809.406–1 General.

809.406–2 Causes for debarment.

809.406–270 Additional causes for debarment.

809.406–3 Procedures.

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809.407 Suspension.

809.407–1 General.

809.470 Fact-finding procedures.

### Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.507 Solicitation provisions and contract clause.

809.507–1 Solicitation provisions.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.



## Subpart 809.1—Responsible Prospective Contractors

### 809.106 Pre-award surveys.

#### 809.106-1 Conditions for pre-award surveys.

(a) Except as provided in paragraphs (b) through (e) of this section, a committee under the direction of the contracting officer and composed of representatives of the medical service or using service chiefs or designees appointed by the facility or VISN director will conduct a pre-award on-site evaluation of the plant, personnel, equipment and processes of the prospective contractor for contracts covering the products and services of the following:

- (1) Bakeries.
- (2) Dairies.
- (3) Ice cream plants.
- (4) Laundry and dry cleaning activities.
- (b) Before any inspection, the contracting officer will determine whether another VA facility or another Federal agency has recently inspected and approved the plant.

(1) The contracting officer will accept an approved inspection report of another VA facility.

(2) If another Federal agency made a plant inspection not more than 6 months before the proposed VA contract period, the contracting officer may accept an approved inspection report of that other Federal agency as satisfactory evidence that the facilities of the bidder meet the bid requirements.

(c) VA will not conduct a pre-award on-site evaluation of a dairy plant when VA receives an acceptable bid from a supplier of dairy products designated as No.1 in the Federal Specifications if the following conditions are met:

(1) The supplier has received a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code.

(2) The rating is current (not over 2 years old) and has been determined by a certified State milk sanitation rating officer in the State of origin or by the

Public Health Service. The contractor must maintain the rating of 90 percent or more during the period of the contract.

(3) The solicitation specifications must include the requirements in paragraphs (c)(1) and (2) of this section.

(d) A dairy plant that does not meet paragraph (c) of this section may offer only dairy products designated as No. 2 in the Federal Specifications. VA will make an award to such a firm only after it completes a pre-award on-site evaluation conducted under paragraph (a) of this section.

(e) Before it makes an open market purchase of fresh bakery products (such as pies, cakes, and cookies), VA will inspect and evaluate the plant where these products are produced or prepared under paragraph (a) of this section. VA will make an on-site evaluation at least annually and record the results on VA Form 10-2079, Inspection Report of Bakery.

## Subpart 809.4—Debarment, Suspension, and Ineligibility

SOURCE: 85 FR 60074, Sept. 24, 2020, unless otherwise noted.

### 809.400 Scope of subpart.

This subpart implements FAR subpart 9.4 and prescribes VA's procedures and related actions for the suspension and debarment of contractors.

### 809.402 Policy.

(b) Statutory debarments pursuant to the authority of 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, are mandatory when the determination is made that a business concern has willfully and intentionally misrepresented its status as a service-disabled, veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB).

### 809.403 Definitions.

*Suspension & Debarment (S&D) Committee* means a committee authorized by the SDO to assist the SDO with suspension and debarment related matters.

*Suspending and Debarring Official (SDO)* means the individual responsible

## **809.405**

for final decisions regarding suspension and debarment, as appointed by the agency.

### **809.405 Effect of listing.**

The authority under FAR 9.405(a), 9.405(d)(2), and 9.405(d)(3) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors with active exclusions in the System for Award Management (SAM) is delegated to the Suspending and Debarment Official (SDO). This authority is further delegated to the HCAs, who may delegate this authority, in writing, to a designee.

### **809.405-1 Continuation of current contracts.**

(a) Notwithstanding the suspension, proposed debarment, or debarment of a contractor, VA may continue contracts or subcontracts in existence at the time the contractor was suspended, proposed for debarment, or debarred, unless the cognizant head of the contracting activity (HCA) directs otherwise. Examples of factors to be considered include, but are not limited to, potential costs associated with a termination, possible disruption to VA program objectives, and integrity of VA acquisition programs.

(b) Authority to make the determinations under FAR 9.405-1(b) is delegated to the SDO and is further delegated to the HCA, who may delegate this authority, in writing, to a designee. The HCA or their designee must make a written determination of the compelling reasons in accordance with FAR 9.405-1(b). Compelling reasons for the purposes of FAR 9.405-1(b) include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources and meeting estimated quantity for requirements contracts.

### **809.405-2 Restrictions on subcontracting.**

Authority to make the written determination required under FAR 9.405-2 consenting to a contractor's use of a subcontractor who is suspended, proposed for debarment, or debarred is delegated to the SDO. This authority is further delegated to the HCA, who may

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delegate this authority, in writing, to a designee.

### **809.406 Debarment.**

#### **809.406-1 General.**

(a) For the purposes of FAR 9.406-1, the SDO's authority includes debarments pursuant to the Federal Management Regulation at 41 CFR 102-117.295. In addition to the factors listed in FAR 9.406-1, the SDO may consider the following examples before arriving at a debarment decision:

(1) Whether the contractor had a mechanism, such as a hotline, by which employees could have reported suspected instances of improper conduct, and instructions in place that encouraged employees to make such reports; or

(2) Whether the contractor conducted periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting.

(c) As provided in FAR 9.406-1(c), authority to determine whether to continue business dealings between VA and a contractor suspended, proposed for debarment, or debarred is delegated to the SDO.

#### **809.406-2 Causes for debarment.**

#### **809.406-270 Additional causes for debarment.**

(a) *Discretionary causes.* (1) In addition to the causes listed in FAR 9.406-2 (a) through (c), the SDO may debar contractors, based upon a preponderance of the evidence (as defined at FAR 2.101), for the Government's protection, for—

(i) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under subpart 819.70; or

(ii) Failure to observe the material provisions of a voluntary exclusion or an administrative agreement.

(2) The period of debarment shall be commensurate with the seriousness of the action.

(b) *Statutory cause.* (1) Pursuant to 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, the SDO shall debar, from contracting with VA, for a

period of not less than five years, any business concern that has willfully and intentionally misrepresented the status of that concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans.

(2) Debarment of a business concern pursuant to 38 U.S.C. 8127(g) shall include the debarment of all principals in the business concern. Debarment shall be for a period of not less than five years.

(3) "Willful and intentional" misrepresentations, for the purpose of debarment actions taken pursuant to 38 U.S.C. 8127(g), are defined as deliberate misrepresentations concerning the status of the concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans as supported by the preponderance of evidence. Examples of a preponderance of evidence for deliberate misrepresentation of SDVOSB and/or VOSB status include but are not limited to: Criminal convictions, plea agreements, deferred prosecution agreements, Board of Contract Appeals decisions, and admissions of guilt.

#### **809.406-3 Procedures.**

(a) Any individual may submit a referral to debar an individual or contractor to the SDO or to the S&D Committee. The referral for debarment shall be supported with evidence of a cause for debarment listed in FAR 9.406-2, or 809.406-2. The SDO shall forward referrals for debarment to the S&D Committee. If the referring individual is a VA employee and the referral for debarment is based on possible criminal or fraudulent activities, the VA employee shall also refer the matter to the VA Office of Inspector General.

(b) When the S&D Committee finds preponderance of the evidence for a cause for debarment, as listed in FAR 9.406-2 or 809.406-2, it shall prepare a recommendation and draft notice of proposed debarment for the SDO's consideration.

(c) VA shall send the notice of proposed debarment to the last known address of the individual or contractor,

the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery. In the case of a contractor, VA may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The S&D Committee concurrently shall list the appropriate parties as excluded in the SAM in accordance with FAR 9.404.

(d) If VA does not receive a reply from the contractor within 30 days after sending the notice of proposed debarment, the S&D Committee shall prepare a recommendation and refer the case to the SDO for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 30 days after sending the notice of proposed debarment, the S&D Committee shall consider the information in the reply before the S&D Committee makes its recommendation to the SDO.

(f) The S&D Committee, upon the request of the contractor proposed for debarment, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument personally or through a representative. The contractor may supplement the oral presentation with written information and argument. VA shall conduct the proceeding in an informal manner and without requirement for a transcript.

(g) If the S&D Committee finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall refer the dispute to a designee for a resolution pursuant to 809.470, Fact-finding procedures. The S&D Committee shall provide the contractor or individual the disputed material fact(s). Decisions and determinations of VA's Center for Verification and

Evaluation (CVE) or Office of Small and Disadvantaged Business Utilization (OSDBU), such as status protest decisions, and size determinations of the SBA shall not be subject to dispute or fact-finding in proposed debarment actions. The S&D Committee and SDO shall accept these decisions and determinations as resolved facts.

(h) If the proposed debarment action is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 809.470, Fact-finding procedures, the SDO shall make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written agreements presented or submitted to the S&D Committee by the contractor.

(i) In actions processed under FAR 9.406 where no suspension is in place and where fact finding is not required, the VA shall make the final decision on the proposed debarment within 30 working days after receipt of any information and argument submitted by the contractor, unless the SDO extends this period for a good cause.

(j) In actions processed under 809.406-270(b), the SDO notifies the individuals and/or contractors of the determination of willful and intentional misrepresentation in the notice of proposed debarment. VA shall issue the final decision, removing or upholding the determination, within 90 days after SDO's determination of willful and intentional misrepresentation.

#### **809.406-4 Period of debarment.**

(a) The SDO will base the period of debarment on the circumstances surrounding the cause(s) for debarment.

(b) The SDO may remove a debarment imposed under FAR 9.406, amend its scope, or reduce the period of debarment based on a S&D Committee recommendation if—

(1) VA has debarred the contractor; and

(2) The debarring official concurs with documentary evidence submitted by or on behalf of the contractor setting forth the appropriate grounds for granting relief. Appropriate grounds include newly discovered material evi-

dence, reversal of a conviction, bona fide change of ownership or management, elimination of the cause for which debarment was imposed, or any other appropriate grounds.

(c) The period of debarment for willful and intentional misrepresentations of SDVOSB or VOSB status pursuant to 809.406-270(b) shall not be less than 5 years.

#### **809.407 Suspension.**

##### **809.407-1 General.**

(a) As provided in FAR 9.407-1(d), authority to determine whether to continue business dealings between VA and a suspended contractor is delegated to the HCAs. Compelling reasons include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources, and meeting estimated quantities for requirements contracts.

(b) For the purposes of FAR 9.407-1, the SDO is the suspending official under the Federal Management Regulation at 41 CFR 102-117.295.

##### **809.407-3 Procedures.**

(a) Any individual may submit a referral to suspend an individual or contractor to the SDO or to the S&D Committee. Referrals shall include supporting evidence of a cause for suspension listed in FAR 9.407-2. The SDO shall forward the referral to the S&D Committee. If the referring individual is a VA employee and the referral for suspension is based on possible criminal or fraudulent activities, the VA employee shall also refer the matter to the VA Office of Inspector General.

(b) When the S&D Committee finds adequate evidence of a cause for suspension, as listed in FAR 9.407-2, it shall prepare a recommendation and draft notice of suspension for the SDO's consideration.

(c) VA shall send the notice of suspension to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery. In the case of a contractor, VA may send the notice of suspension

to any partner, principal, officer, director, owner or co-owner, or joint venture. The S&D Committee concurrently shall list the appropriate parties as excluded in SAM in accordance with FAR 9.404.

(d) If VA receives a reply from the contractor within 30 days after receipt of the notice of suspension, the S&D Committee shall consider the information in the reply before the Committee makes further recommendations to the SDO. The S&D Committee, upon the request of a suspended contractor, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument personally or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript.

(e) For the purposes of FAR 9.407-3(b)(2), Decision making process, in actions not based on an indictment, if the S&D Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. However, the S&D Committee may first coordinate any further proceeding regarding the material facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA shall take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA in writing that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the SDO agrees that there is a genuine dispute of material facts, the SDO shall refer the dispute to the designee for resolution pursuant to 809.470.

#### **809.470 Fact-finding procedures.**

The provisions of this section constitute the procedures to be used to resolve genuine disputes of material fact pursuant to 809.406-3 and 809.407-3 of this subpart. The SDO shall appoint a

designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the SDO. The fact-finder shall establish the date for the fact-finding hearing, normally to be held within 30 days after the S&D Committee notifies the contractor or individual that the SDO has established a genuine dispute of material fact(s) exists.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the material fact(s) identified by the SDO. The contractor or individual may appear in person or through a representative at the fact-finding hearing. The contractor or individual may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact-finder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence for proposed debarments, and by adequate evidence for suspensions. Written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the SDO, the Government's representative, and the contractor or individual. The SDO will consider the written findings of fact in the decision regarding the suspension or proposed debarment.

**809.507**

**Subpart 809.5—Organizational and Consultant Conflicts of Interest**

**809.507 Solicitation provisions and contract clause.**

**809.507-1 Solicitation provisions.**

(a) While conflicts of interest may not presently exist, award of certain types of contracts may create potential future organizational conflicts of interest (see FAR 9.508 for examples). If a solicitation may create a potential future organizational conflict of interest, the contracting officer shall insert a provision in the solicitation imposing an appropriate restraint on the contractor's eligibility for award of contracts in the future. Under FAR 9.507-1, the restraint must be appropriate to the nature of the conflict and may exclude the contractor from award of one or more contracts in the future.

(b) The provision at 852.209-70, Organizational Conflicts of Interest, must be included in any solicitation for the services addressed in FAR 9.502.

[85 FR 60076, Sept.24, 2020]

**PART 810—MARKET RESEARCH**

Sec.

810.001 Market research policy.

810.002 Market research procedures.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301-1.304.

SOURCE: 74 FR 64630, Dec. 8, 2009, unless otherwise noted.

**810.001 Market research policy.**

When conducting market research, VA contracting teams shall use the VIP database, at <http://www.VetBiz.gov>, in addition to other sources of information.

**810.002 Market research procedures.**

Contracting officers shall record VIP queries in the solicitation file by printing the results of the search(s) along with specific query used to generate the search(s).

**PART 811—DESCRIBING AGENCY NEEDS**

**Subpart 811.0—Definitions**

**48 CFR Ch. 8 (10-1-21 Edition)**

**Subpart 811.1—Selecting and Developing Requirements Documents**

Sec.

811.107-70 Contract clause.

**Subpart 811.2—Using and Maintaining Requirements Documents**

811.204-70 Contract clause.

**Subparts 811.4—811.6 [Reserved]**

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

**Subpart 811.0—Definitions**

**Subpart 811.1—Selecting and Developing Requirements Documents**

**811.107-70 Contract clause.**

The contracting officer shall insert the clause at 852.211-70, Equipment Operation and Maintenance Manuals, in solicitations and contracts for technical medical equipment, and other technical and mechanical equipment and devices where the requiring activity determines manuals are a necessary requirement for operation and maintenance of the equipment.

[83 FR 49305, Oct. 1, 2018]

**Subpart 811.2—Using and Maintaining Requirements Documents**

**811.204-70 Contract clause.**

The contracting officer shall insert the clause at 852.211-72, Technical Industry Standards, in solicitations and contracts requiring conformance to technical industry standards, federal specifications, standards and commercial item descriptions unless comparable coverage is included in the item specification.

[83 FR 49305, Oct. 1, 2018]

**Subparts 811.4—811.6 [Reserved]**

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**812.301**

**PART 812—ACQUISITION OF  
COMMERCIAL ITEMS**

**Subpart 812.1—Acquisition of Commercial  
Items—General**

Sec.

812.102 Applicability.

812.102–70 Applicability of Veterans preferences.

**Subpart 812.3—Solicitation Provisions and  
Contract Clauses for the Acquisition of  
Commercial Items**

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

AUTHORITY: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

**Subpart 812.1—Acquisition of  
Commercial Items—General**

**812.102 Applicability.**

**812.102–70 Applicability of Veterans  
preferences.**

Based on the authority under 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program in subpart 819.70 applies to VA contracts under this

part. The provisions and clauses prescribed reflect agency unique statutes applicable to the acquisition of commercial items.

[85 FR 16905, Mar. 25, 2020]

**Subpart 812.3—Solicitation Provi-  
sions and Contract Clauses  
for the Acquisition of Com-  
mercial Items**

**812.301 Solicitation provisions and  
contract clauses for the acquisition  
of commercial items.**

(f)(1) Contracting officers shall insert the clause 852.212–70, Provisions and Clauses Applicable to VA Acquisition of Commercial Items, in all solicitations and contracts for commercial acquisitions and check only those provisions and clauses that apply to the individual acquisition.

(2) Contracting officers shall insert the clause 852.212–71, Gray Market Items, in solicitations and contracts for new medical equipment for VA Medical Centers and that include FAR provisions 52.212–1, Instruction to Offerors—Commercial Items, and 52.212–2, Evaluation—Commercial Items.

[85 FR 16905, Mar. 25, 2020]

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.  
813.003–70 Policy.

#### Subpart 813.1—Procedures

- 813.102 Source list.
- 813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
- 813.106–70 Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program.

#### Subpart 813.2 [Reserved]

#### Subpart 813.3—Simplified Acquisition Methods

813.305–70 VA's imprest funds and third party drafts policy.

AUTHORITY: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### 813.003–70 Policy.

(a) The Veterans First Contracting Program in subpart 819.70 applies to VA contracts, orders and BPAs under this part and has precedence over other small business programs referenced in FAR parts 13 and 19.

(b) Notwithstanding FAR 13.003(b)(2), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart 819.70. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with FAR 19.203, and 819.7004.

(c) When using competitive procedures, the preference for restricting

competition to verified SDVOSBs/VOSBs in accordance with paragraph (b) of this section is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified firms at fair and reasonable prices that offer best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs/VOSBs, in accordance with 819.7005 or 819.7006 when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at 819.7009.

(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at 815.304 and the evaluation criteria clause prescribed at 815.304–71(a).

(d) The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including verification of the SDVOSB and VOSB status of an offeror, and other small business requirements in 13 CFR part 121 and 13 CFR 125.6 (*e.g.*, small business representation, non-manufacturer rule, and subcontracting limitations).

[85 FR 16905, Mar. 25, 2020]

#### Subpart 813.1—Procedures

##### 813.102 Source list.

Pursuant to 819.7003, contracting officers shall use the Vendor Information Pages (VIP) database to verify SDVOSB/VOSB status.

[85 FR 16906, Mar. 25, 2020]

##### 813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

##### 813.106–70 Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program.

(a) When using competitive procedures under this part, the contracting officer shall use the Veterans First



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Contracting Program in subpart 819.70 and the guidance set forth in 813.003-70.

(b) Pursuant to 38 U.S.C. 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a verified SDVOSB or VOSB for procurements under the simplified acquisition threshold, as authorized by FAR 6.302-5.

(c) For procurements above the simplified acquisition threshold, pursuant to 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a firm verified under the Veterans First Contracting Program at subpart 819.70, using procedures other than competitive procedures, as authorized by FAR 6.302-5 and in accordance with 819.7007 and 819.7008.

[85 FR 16906, Mar. 25, 2020]

### Subpart 813.2 [Reserved]

### Subpart 813.3—Simplified Acquisition Methods

#### 813.305-70 VA's imprest funds and third party drafts policy.

VA's Governmentwide commercial purchase card and/or convenience checks shall be used in lieu of imprest funds and third party drafts.

[85 FR 16906, Mar. 25, 2020]

## PART 814—SEALED BIDDING

### Subpart 814.1 [Reserved]

### Subpart 814.2—Solicitation of Bids

Sec.

814.201 Preparation of invitations for bids.

814.201-2 Part I—The Schedule.

814.201-6 Solicitation provisions.

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

### Subpart 814.3—Submission of Bids

814.304 Submission, modification, and withdrawal of bids.

### Subpart 814.4 [Reserved]

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 814.1 [Reserved]

### Subpart 814.2—Solicitation of Bids

#### 814.201 Preparation of invitations for bids

##### 814.201-2 Part I—The Schedule.

(b) *Section B, Supplies or services and prices.*

(1) When the contracting officer determines that it will be to the Government's advantage to make an award on the basis of a summary bid, the IFB shall include the following statement in Part I—The Schedule, Section B:

The award will be made on either the bid price for individual items or the summary bid price summary for all items, whichever results in the lowest price to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(2) When a contracting officer determines that it will be to the Government's advantage to make an award by group or groups of items, the IFB shall include the following statement in Part I—The Schedule, Section B:

Award shall be made on the basis of the bid price for each identified group of items. The individual price of each line item in the group does not have to be the lowest bid received for that item. This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following applies:

(i) Furniture or fixtures are required for a single project and uniformity of design is desirable.

(ii) The articles required will be assembled and used as a unit.

[83 FR 16208, Apr. 16, 2018]

#### 814.201-6 Solicitation provisions.

(a) In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer shall define the extent to which VA will authorize and consider alternate bids.

(1) The contracting officer shall include the provision at 852.214-71, Restrictions on Alternate Item(s), in the

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invitation when VA will consider an alternate item only where acceptable bids on a desired item are not received or the bids do not satisfy the total requirement. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)

(2) The contracting officer shall include the provision at 852.214-72, Alternate Item(s), in the invitation, when VA will consider an alternate item on an equal basis with the item specified. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)

(3) In addition to either of the provisions referenced in paragraphs (a)(1) or (2) of this section, the contracting officer shall include the provision at 852.214-73, Alternate Packaging and Packing, in the invitation when bids will be allowed based on different packaging, unit designation, etc.

(b) The contracting officer shall include the provision at 852.214-74, Marking of Bid Samples, in the invitation, along with the provision at FAR 52.214-20, Bid Samples, when the contracting officer determines that samples are necessary to the proper awarding of a contract.

[83 FR 16209, Apr. 16, 2018]

### **814.202 General rules for solicitation of bids.**

#### **814.202-4 Bid samples.**

(a) *Policy.* When bid samples are required, the contracting officer shall include a notice in the contract Schedule that requires bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(g) *Handling bid samples.*

(1) Samples from successful bids shall be retained for the period of contract performance.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the

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end of the contract term in accordance with the bidder's instructions.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of in accordance with the bidder's instructions.

[83 FR 16209, Apr. 16, 2018]

### **Subpart 814.3—Submission of Bids**

#### **814.304 Submission, modification, and withdrawal of bids.**

(f) A notification to late bidders shall specify the final date by which VA must receive evidence of timeliness. This date shall be within five calendar days of the date an electronic notice is sent to the bidder, or within ten calendar days of receipt by the bidder of a notice sent by other than electronic means.

[83 FR 16209, Apr. 16, 2018]

### **Subpart 814.4 [Reserved]**

## **PART 815—CONTRACTING BY NEGOTIATION**

### **Subpart 815.3—Source Selection**

Sec.

815.304-70 Evaluation factor commitments.

815.304-71 Solicitation provision and clause

815.370 Only one offer.

815.370-1 Policy.

815.370-2 Promote competition.

815.370-3 Fair and reasonable price.

815.370-4 Exceptions.

815.370-5 Solicitation provision.

### **Subparts 815.4—815.6 [Reserved]**

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### **Subpart 815.3—Source Selection**

#### **815.304-70 Evaluation factor commitments.**

Contracting officers shall—

(a) Include the clause at 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small

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Business Evaluation Factors, in negotiated solicitations and contracts giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(b) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in making award determination; and

(c) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

[84 FR 46452, Sept. 4, 2019]

### **815.304-71 Solicitation provision and clause.**

(a) The contracting officer shall insert the clause at 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in competitively negotiated solicitations and contracts that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215-71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR clause 852.215-70, Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors.

[84 FR 46452, Sept. 4, 2019]

### **815.370 One offer.**

#### **815.370-1 Policy.**

It is VA policy, if only one offer is received in response to a competitive solicitation, to—

(a) Take action to promote competition (see 815.370-2); and

(b) Ensure that the price is fair and reasonable (see 815.370-3) and comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

[84 FR 46452, Sept. 4, 2019]

#### **815.370-2 Promote competition.**

Except as provided in 815.370-4, if only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer should—

(a) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

(b) Consider re-soliciting, allowing an additional period of at least 30 days for receipt of proposals.

[84 FR 46452, Sept. 4, 2019]

### **815.370-3 Fair and reasonable price.**

(a) If there was “reasonable expectation that two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).

(b) Except as provided in 815.370-4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 815.370-4(a)(3)), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403-4. For acquisitions that exceed the cost or pricing data threshold, if no exception at FAR 15.403-1(b) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

[84 FR 46452, Sept. 4, 2019]

## **815.370-4**

### **815.370-4 Exceptions.**

(a) The requirements at 815.370-2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of emergency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; or to support response to an emergency or major disaster;

(3) Small business set-asides under FAR subpart 19.5, set-asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the VA Small Business Program (see VAAR subpart 819.70), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601-2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to ensure adequate time for competition is allotted or that the price is fair and reasonable.

[84 FR 46453, Sept. 4, 2019]

### **815.370-5 Solicitation provision.**

Use the provision at 852.215-72, Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at 815.370-4 applies.

[84 FR 46453, Sept. 4, 2019]

## **Subparts 815.4—815.6 [Reserved]**

## **PART 816—TYPES OF CONTRACTS**

### **Subpart 816.1 [Reserved]**

#### **Subpart 816.2—Fixed-Price Contracts**

Sec.

816.203 Fixed-price contracts with economic price adjustment.

816.203-4 Contract clauses.

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### **Subpart 816.5—Indefinite-Delivery Contracts**

816.505 Ordering.

816.506-70 Requirements—supplement for mortuary services.

### **Subpart 816.7—Agreements**

816.770 Consignment agreements.

### **Subpart 816.70 [Reserved]**

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### **Subpart 816.1 [Reserved]**

### **Subpart 816.2—Fixed-Price Contracts**

SOURCE: 83 FR 7403, Feb. 21, 2018, unless otherwise noted.

#### **816.203 Fixed-price contracts with economic price adjustment.**

##### **816.203-4 Contract clauses.**

(e) The contracting officer shall, when contracting by negotiation, use the following clauses.

(1) The contracting officer shall insert the clause at 852.216-71, “Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, subject to FAR 16.203-4(d)(1) and when changes to a price index will be used to calculate corresponding changes to the total contract price or unit prices of the contract.

(i) Exceptions:

(A) Do not use this clause when changes to the price index will apply to only a component part of the contract price.

(B) Do not publish or include the footnotes in the solicitation, they are only included herein to provide guidance to contracting officers.

(2) The contracting officer shall insert the clause at 852.216-72, “Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, and subject to FAR

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16.203-4(d)(1) when changes to an industry price index shall be used to calculate changes to only a portion of the contract price or the unit prices of the contract.

(i) Exceptions:

(A) The clause should not be used when a change in the index price will be applied directly and totally to the contract price or the unit prices, *i.e.*, when the Consumer Price Index is used to calculate changes and a 5% increase in the CPI would result in a 5% increase in the total contract price of the unit prices.

(B) Do not publish or include the footnotes in the solicitation, as they are only provided for guidance to the contracting officer.

(3) The contracting officer shall insert the clause at 852.216-73, “Economic Price Adjustment—State Nursing Home Care for Veterans,” in solicitations and firm fixed price contracts subject to FAR 16.203-4(d)(1) and the following circumstance: When changes to the Medicaid rate, as authorized by the State Medicaid Agency (SMA), shall be used to calculate corresponding changes in the total contract price or the per diem prices of the agreement or contract.

(4) The contracting officer shall insert the clause at 852.216-74, “Economic Price Adjustment—Medicaid Labor Rates,” in solicitations and firm fixed price contracts when the conditions specified in FAR 16.203-4(c)(1) apply. The clause is modifiable by increasing the 10-percent maximum limit on aggregate increases specified in paragraph (c)(4) of this section, upon the approval by the Head of the Contracting Activity (HCA) or designee.

(5) The contracting officer shall insert the clause at 852.216-75, “Economic Price Adjustment—Fuel Surcharge,” in solicitations and firm fixed price contracts when contracting by negotiation is subject to changes in the cost of fuel increases. The clause is subject to the conditions at FAR 16.203-4(d)(1).

(f) The contracting officer shall follow procedures as prescribed in FAR 16.203-4(c) and 38 CFR 51.41(b)(1) for EPA fixed price contracts based on Medicaid rates. These procedures shall be used when contracting by negotiation between the VA and the State

Veteran Home for making payments under contracts for nursing home care for Veterans.

### Subpart 816.5—Indefinite-Delivery Contracts

#### 816.505 Ordering.

(b)(8) Task-order and delivery-order ombudsman. The task-order contract and delivery-order ombudsman for VA is the Associate Deputy Assistant Secretary (ADAS) for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

[83 FR 7404, Feb. 21, 2018]

#### 816.506-70 Requirements—supplement for mortuary services.

Insert the clause 852.216-76, Requirements—Supplement for Mortuary Services, in contracts for mortuary services containing FAR clause 52.216-21, Requirements. The contracting officer shall insert activities authorized to place orders in paragraph (e) of the clause.

[84 FR 46453, Sept. 4, 2019]

### Subpart 816.7—Agreements

SOURCE: 83 FR 7404, Feb. 21, 2018, unless otherwise noted.

#### 816.770 Consignment agreements.

Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is defined as a delivery method for a specified period of time in which the contractor provides an item/s for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Consignment agreements are allowable and shall be considered in those instances when the requirement

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for an item is immediate and on-going and when it is impossible to predetermine the type or model of a particular item until the need is established, and it is determined to be in the best interest of the VA.

**Subpart 816.70 [Reserved]**

**PART 817—SPECIAL CONTRACTING METHODS**

**Subparts 817.1—817.4 [Reserved]**

**Subpart 817.5—Interagency Acquisitions**

Sec.

817.501 General.

**Subpart 817.70—Undefinitized Contract Actions**

817.7000 Scope.

817.7001 Definitions.

817.7002 Exceptions.

817.7003 Policy.

817.7004 Limitations.

817.7004-1 Authorization.

817.7004-2 Price ceiling.

817.7004-3 Definitization schedule.

817.7004-4 Final price negotiation—profit.

817.7005 Contract clause.

AUTHORITY: 38 U.S.C. 8127–8128; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

**Subparts 817.1—817.4 [Reserved]**

**Subpart 817.5—Interagency Acquisitions**

**817.501 General.**

(d) Agreements pursuant to FAR subpart 17.5, including construction, shall include a requirement, that, when acquiring goods and services on behalf of the Department of Veterans Affairs, the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70.

[84 FR 29393, July 24, 2019]

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**Subpart 817.70—Undefinitized Contract Actions**

SOURCE: 84 FR 29393, June 24, 2019, unless otherwise noted.

**817.7000 Scope.**

This subpart prescribes policies and procedures for use of undefinitized contract actions.

**817.7001 Definitions.**

As used in this subpart—

(a) *Contract action* includes:

(1) Contracts and contract modifications for supplies or services.

(2) Task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, *e.g.*, engineering change proposals and value engineering change proposals.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Definitization proposal* means a proposal containing sufficient data for the VA to do complete and meaningful analyses and audits of the—

(1) Data in the proposal; and

(2) Any other data that the contracting officer has determined VA needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts and orders under basic ordering agreements for which the final price has not been agreed upon before performance has begun.

**817.7002 Exceptions.**

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart:

(1) Purchases at or below the simplified acquisition threshold.

(2) Congressionally mandated long-lead procurement contracts.

(b) However, the contracting officer shall apply the policy and procedures

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to the contract actions in paragraph (a) to the maximum extent practicable.

### 817.7003 Policy.

Undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable.

### 817.7004 Limitations.

#### 817.7004-1 Authorization.

The contracting officer shall obtain approval one level above the contracting officer before—

(a) *Entering into a UCA*. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on the VA resulting from delays in beginning performance.

(b) *Including requirements for non-urgent items and equipment in a UCA*. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the Government.

(c) *Modifying the scope of a UCA when performance has already begun*. The request should show that the modification is consistent with good business practices and in the best interests of the Government.

#### 817.7004-2 Price ceiling.

UCAs shall include a not-to-exceed price.

#### 817.7004-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may

be extended but may not exceed the date that is 180 days after the contractor submits a definitization proposal); or

(2) The date on which the amount of funds paid to the contractor under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a definitization proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely definitization proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

#### 817.7004-4 Final price negotiation—profit.

Before the final price of a UCA is negotiated, contracting officers shall ensure the profit agreed to and documented in the contract negotiation memorandum reflects consideration of any risks incurred in performance of the work under the UCA.

### 817.7005 Contract clause.

(a) Use the clause at 852.217-70, Contract Action Definitization, in—

(1) All UCAs;

(2) Solicitations associated with UCAs;

(3) Orders against basic ordering agreements;

(4) Indefinite delivery task orders; and

(5) Any other type of contract providing for the use of UCAs.

(b) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(c) If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1, 15.403-2, or 15.403-3 for not requiring submission of certified cost or pricing data, the words "and certified cost or pricing data" may be deleted from paragraph (a) of the clause.

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 819—SMALL BUSINESS PROGRAMS

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AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); 48 CFR 1.301-1.304; and 15 U.S.C. 637(d)(4)(E).

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### Subpart 819.2—Policies

##### 819.201 General policy.

The Secretary shall establish goals for each fiscal year for participation in Department contracts by SDVOSBs and VOSBs. In order to establish contracting priority for veteran-owned and controlled small businesses in accordance with 38 U.S.C. 8128, the Secretary may decrease other status-specific small business goals set forth by section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) upon consultation with the Administrator of the U.S. Small Business Administration (SBA).

[74 FR 64631, Dec. 8, 2009]

##### 819.202 Specific policies.

##### 819.202-1 Encouraging small business participation in acquisitions.

Contracting officers may negotiate payment terms of less than 30 calendar



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days to encourage small business participation. A period of less than 7 days may not be prescribed (see FAR 32.908(c)(2)). The contracting officer and the local fiscal officer must be in agreement on the negotiated payment terms before awarding the contract.

### **819.202-5 Data collection and reporting requirements.**

(a) Administration heads, staff office directors, and HCAs must, in addition to the responsibilities designated in FAR 19.202-5, cooperate with OSDBU in formulating specific small business program goals and providing other data necessary for goal assessment.

(b) Each VA acquisition activity shall establish goals for the expenditure of funds with preferred businesses within their projected annual budget. OSDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(c) A Procurement Preference Program Goals Report (Report Control Symbol 00-0427) shall be submitted annually by each acquisition activity to reach OSDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal. Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with the Small Business Administration (SBA).

(d) As an addendum to the report, each acquisition activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category.

(e) Upon review by OSDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goals submitted. Based on documents submitted, OSDBU will make a final determination on the goal assignment.

(f) Accomplishment of goals will be determined by OSDBU from data reported by acquisition activities into

the Federal Procurement Data System-Next Generation (FPDS-NG).

### **819.202-70 HCA responsibilities.**

An HCA must perform the following functions in support of the small business program. These functions cannot be delegated without written approval of the Director, OSBDU:

(a) Develop, on an annual basis, a plan of operation to increase the share of contracts and purchase orders awarded to the small business programs prescribed in FAR Part 19. This plan must also include veteran-owned and service-disabled veteran-owned small business concerns.

(b) Promote goals for the small business programs set forth in FAR Part 19. This must also include veteran-owned and service-disabled veteran-owned small business concerns.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides.

(d) Review class set-asides, established in accordance with criteria in FAR 19.503, at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn.

(e) Maintain updated lists of acquisitions reserved for small business on a class basis.

(f) If the acquisition activity is assigned to an SBA Procurement Center Representative, assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to the SBA Procurement Center Representative's official duties.

(g) Encourage technical personnel and end-users to participate in discussions with veteran-owned and service-disabled veteran-owned small business concerns.

(h) Attend conferences and meetings publicizing small business programs. This responsibility may be delegated without the written approval of the Director, OSBDU.

**819.202-71 Additional contracting officer responsibilities.**

In addition to the duties designated in FAR 19.202 through 19.202-6, contracting officers must perform the following functions in support of the small business program:

- (a) Make maximum use of small business source lists.
- (b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.
- (c) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent possible.
- (d) Assist and counsel small business firms with individual problems.
- (e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.
- (f) Submit informational copies of all small business protests and appeals to the Director, OSBDU, at the same time they are submitted to the SBA.

**819.202-72 Order of precedence. [Reserved]****Subpart 819.3—Determination of Small Business Status for Small Business Programs****819.307 SDVOSB/VOSB Small Business Status Protests.**

(a) All protests relating to whether a Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) is a “small” business for the purposes of any Federal program are subject to 13 CFR part 121 and must be filed in accordance with that part. SDVOSB and VOSB status shall be determined in accordance with 38 CFR part 74.

(b) A contracting officer or an interested party may protest the apparently successful offeror’s SDVOSB or VOSB status. “Interested party” for the purpose of filing a status protest is an actual offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) All status protests shall be in writing and shall state all specific grounds for the protest. Assertions that a protested concern is not an

SDVOSB or VOSB concern, without setting forth specific facts or allegations, are insufficient. An interested party must submit its status protest to the contracting officer by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). An interested party must deliver their protest in person, by electronic mail, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer. Any status protest received after these time limits is untimely. Any status protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester. Except for premature status protests, the contracting officer must forward to the Director, Center for Verification and Evaluation (CVE), any status protest received.

(d) The Director, CVE, will notify the protester and the contracting officer of the date the status protest was received by CVE and whether the status protest will be processed or dismissed for lack of timeliness or specificity.

(e) The Director, CVE, will determine the SDVOSB or VOSB status of the protested concern based upon the totality of circumstances within 21 business days after receipt of the status protest. If the Director, CVE, does not contact the contracting officer within 21 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted the Director, CVE, an extension. The contracting officer may award the contract after receipt of a status protest if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer shall document this determination for the contract file.

(f) A denial decision by the Director, CVE, that is based on the failure to meet any service-disabled Veteran or Veteran criterion as defined in 38 CFR 74.1 is not subject to an appeal to the Executive Director, Office of Small and

Disadvantaged Business Utilization (OSDBU), and is a final decision.

(g) The Director, CVE, will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by the Executive Director, OSDBU. The determination may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

(h) If the Director, CVE, sustains an SDVOSB or VOSB status protest and the contract has already been awarded, then the awarded contract shall be deemed void ab initio and the contracting officer shall rescind the contract and award the contract to the next SDVOSB or VOSB in line for the award. The ineligible SDVOSB or VOSB concern shall not be permitted to submit another offer as a SDVOSB or VOSB on a future SDVOSB or VOSB procurement under this part, unless it successfully appeals the determination of the Director, CVE, to the Executive Director, OSDBU, or unless it applies for and receives verified SDVOSB or VOSB status in accordance with 38 CFR part 74.

(i) Except as provided in subsection (f), the protestor or the protested SDVOSB or VOSB concern may file an appeal of the status protest determination with the Executive Director, OSDBU. The Executive Director must receive the appeal no later than 5 business days after the date of receipt of the status protest determination. The Executive Director will dismiss any appeal received after the 5-day period. "Filing" means a document is received by the Executive Director by 5:30 p.m., Eastern Standard Time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due to, for example, security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt by the Executive Director, OSDBU. Submit appeals to: Executive Director, OSDBU (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(j) The appeal must be in writing. The appeal must identify the status protest determination being appealed and must set forth a full and specific statement as to why the decision was based on clear error of fact or law.

(k) The party appealing the determination must provide notice of the appeal to the contracting officer. The Executive Director will decide all appeals under this subpart solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

(l) The Executive Director will make a decision within 10 business days of the receipt of the appeal, if practicable, and will base the decision only on the information and documentation in the protest record as supplemented by the appeal. The Executive Director will provide a copy of the decision to the contracting officer and the protested SDVOSB or VOSB concern. The Executive Director's decision, if received before the award, will apply to the pending acquisition. If the Executive Director decides in favor of the appealing party and the decision is received after the award, the contracting officer may terminate the contract or not exercise the next option. The Executive Director's decision is the final decision. The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

[78 FR 59865, Sept. 30, 2013]

## Subpart 819.5—Set-Asides for Small Business

### 819.502 Setting aside acquisitions.

#### 819.502-2 Total small business set-asides.

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page \_\_\_\_, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page \_\_\_\_, applies to items \_\_\_\_ through \_\_\_\_ in this solicitation.

(b) Contracting officers must ensure that the appropriate product or service classification and the related size

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standard are included in each solicitation.

#### **819.502-3 Partial set-asides.**

When, in accordance with the provisions of FAR 19.502-3, the contracting officer determines that a particular procurement will be partially set aside for small business participation, the solicitation for bids shall include the appropriate product or service classification and appropriate size standard, and the following statement shall be placed on the face page:

Notice of partial set-aside, page \_\_\_\_, applies to item \_\_\_\_ through item \_\_\_\_ in this solicitation.

### **Subpart 819.6—Certificates of Competency and Determinations of Responsibility**

#### **819.602 Procedures.**

##### **819.602-3 Resolving differences between VA and the Small Business Administration.**

The Director, OSDBU, is the VA liaison with the SBA. Information copies of correspondence sent to the SBA seeking a certificate of competency determination must be concurrently provided to the Director, OSDBU. Before appealing a certificate of competency, the HCA must seek concurrence from the Director, OSDBU.

### **Subpart 819.7—The Small Business Subcontracting Program**

SOURCE: 74 FR 64632, Dec. 8, 2009, unless otherwise noted.

#### **819.704 Subcontracting plan requirements.**

(a) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA SDVOSB prime contracting goal for the total value of planned subcontracts.

(b) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA VOSB prime contracting

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goal for the total value of all planned subcontracts.

(c) VA's OSDBU shall review all prime contractor's subcontracting plan achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) of this section, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in 804.1102.

#### **819.705 Appeal of Contracting Officer decisions.**

(a) Acquisitions not exceeding the simplified acquisition threshold (SAT) and 819.7007 and 819.7008 are excluded from this section.

(b) When an interested party intends to appeal a contracting officer's decision to not use the set-aside authority contained in subpart 819.70, the party shall notify the contracting officer, in writing, of its intent to challenge the decision. The contracting officer has 5 working days to reply to the challenge by either revising the strategy or indicating the rationale for not setting-aside the requirement. Upon receipt of the decision, the interested party may appeal to the Head of the Contracting Activity (HCA). Such appeal shall be filed within 5 working days of receipt of the contracting officer's decision. The HCA has 5 working days to respond to the appeal. The contracting officer shall suspend action on the acquisition unless the HCA makes a written determination that urgent circumstances exist which would significantly affect the interests of the government. The decision of the HCA shall be final.

(c) Prime contractors submitting businesses declared ineligible for credit in SDVOSB and/or VOSB subcontracting plans may appeal to the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (OOVE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, within 5 working days of receipt of information declaring their subcontractor ineligible. The Executive Director shall have 5 working days to respond. The decision of the Executive Director may be appealed to the

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Senior Procurement Executive (SPE) within 5 working days. The SPE shall have 15 working days to respond and that decision shall be final.

### 819.709 Contract clause.

The contracting officer shall insert VAAR clause 852.219-9, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include FAR clause 52.219-9, Small Business Subcontracting Plan.

## Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)

### 819.800 General.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of VA are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, OSDDBU (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the VA contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to VA, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between VA and SBA and will be administered by VA.

## Subpart 819.70—Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program

SOURCE: 74 FR 64632, Dec. 8, 2009, unless otherwise noted.

### 819.7001 General.

(a) Sections 502 and 503 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127–8128), created an acquisition program for small business concerns owned and controlled by service-disabled veterans and those owned and controlled by veterans for VA.

(b) The purpose of the program is to provide contracting assistance to SDVOSBs and VOSBs.

### 819.7002 Applicability.

This subpart applies to VA contracting activities and to its prime contractors. Also, this subpart applies to any government entity that has a contract, memorandum of understanding, agreement, or other arrangement with VA to acquire goods and services for VA in accordance with 817.502.

### 819.7003 Eligibility.

(a) Eligibility of SDVOSBs and VOSBs continues to be governed by the Small Business Administration regulations, 13 CFR subparts 125.8 through 125.13, as well as the FAR, except where expressly directed otherwise by the VAAR, and 38 CFR verification regulations for SDVOSBs and VOSBs.

(b) At the time of submission of offer, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB concern or VOSB concern;

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and

(3) Verified for eligibility in the VIP database.

(c) A joint venture may be considered an SDVOSB or VOSB concern if

(1) At least one member of the joint venture is an SDVOSB or VOSB concern, and makes the representations in paragraph (b) of this section;

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(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the size standard explanation of affiliates in FAR 19.101; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), modified to include veteran-owned small businesses where this CFR section refers to SDVOSB concerns.

(d) Any SDVOSB or VOSB concern (nonmanufacturer) must meet the requirements in FAR 19.102(f) to receive a benefit under this program.

#### **819.7004 Contracting Order of Priority.**

In determining the acquisition strategy applicable to an acquisition, the contracting officer shall consider, in the following order of priority, contracting preferences that ensure contracts will be awarded:

(a) To SDVOSBs;

(b) To VOSB, including but not limited to SDVOSBs;

(c) Pursuant to—

(1) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(2) The Historically-Underutilized Business Zone (HUBZone) Program (15 U.S.C. 657a); and

(d) Pursuant to any other small business contracting preference.

#### **819.7005 Service-disabled veteran-owned small business set-aside procedures.**

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 813.106, 819.7007 and 819.7008, the contracting officer shall set-aside an acquisition for competition restricted to SDVOSB concerns upon a reasonable expectation that,

(1) Offers will be received from two or more eligible SDVOSB concerns; and

(2) Award will be made at a fair and reasonable price.

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure:

(1) Eligibility is extended to businesses owned and operated by surviving spouses; and

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(2) Businesses are registered and verified as eligible in the VIP database prior to making an award.

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible SDVOSB concern in response to a SDVOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, if appropriate.

#### **819.7006 Veteran-owned small business set-aside procedures.**

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 813.106, 819.7007 and 819.7008, the contracting officer shall set aside an acquisition for competition restricted to VOSB concerns upon a reasonable expectation that:

(1) Offers will be received from two or more eligible VOSB concerns; and

(2) Award will be made at a fair and reasonable price.

(b) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VOSB concern in response to a VOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible VOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs, as appropriate.

(c) When conducting VOSB set-asides, the contracting officer shall ensure the business is registered and verified as eligible in the VIP database prior to making an award.

#### **819.7007 Sole source awards to service-disabled veteran-owned small business concerns.**

(a) A contracting officer may award contracts to SDVOSB concerns on a sole source basis provided:

(1) The anticipated award price of the contract (including options) will not exceed \$5 million;

(2) The requirement is synopsisized in accordance with FAR part 5;

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(3) The SDVOSB concern has been determined to be a responsible contractor with respect to performance; and

(4) Award can be made at a fair and reasonable price.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one SDVOSB concern is available to meet the requirement is not required.

(c) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the VIP database prior to making an award.

### **819.7008 Sole source awards to veteran-owned small business concerns.**

(a) A contracting officer may award contracts to VOSB concerns on a sole source basis provided:

(1) The anticipated award price of the contract (including options) will not exceed \$5 million;

(2) The requirement is synopsisized in accordance with FAR part 5;

(3) The VOSB concern has been determined to be a responsible contractor with respect to performance;

(4) Award can be made at a fair and reasonable price; and

(5) No responsible SDVOSB concern has been identified.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one VOSB concern is available to meet the requirement is not required.

(c) When conducting a VOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the VIP database prior to making an award.

### **819.7009 Contract clauses.**

The contracting officer shall insert VAAR clause 852.219-10, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside or 852.219-11, Notice of Total Veteran-Owned Small Busi-

ness Set-Aside in solicitations and contracts for acquisitions under this subpart.

## **Subpart 819.71—VA Mentor-Protégé Program**

SOURCE: 74 FR 64633, Dec. 8, 2009, unless otherwise noted.

### **819.7101 Purpose.**

The VA Mentor-Protégé Program is designed to assist service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) in enhancing their capabilities to perform contracts and subcontracts for VA. The Mentor-Protégé Program is also designed to improve the performance of VA contractors and subcontractors by providing developmental assistance to protégé entities, fostering the establishment of long-term business relationships between SDVOSBs, VOSBs and prime contractors, and increasing the overall number of SDVOSBs and VOSBs that receive VA contract and subcontract awards. A firm's status as a protégé under a VA contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts.

### **819.7102 Definitions.**

(a) A *Mentor* is a contractor that elects to promote and develop SDVOSBs and/or VOSBs by providing developmental assistance designed to enhance the business success of the protégé. A mentor may be a large or small business concern.

(b) *OSDBU* is the Office of Small and Disadvantaged Business Utilization. This is the VA office responsible for administering, implementing and coordinating the Department's small business programs, including the Mentor-Protégé Program.

(c) *Program* refers to the VA Mentor-Protégé Program as described in this Subpart.

(d) *Protégé* means a SDVOSB or VOSB, as defined in 802.101, which meets federal small business size standards in its primary NAICS code and which is the recipient of developmental assistance pursuant to a Mentor-Protégé agreement.

**819.7103 Non-affiliation.**

A Protégé firm will not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance from the mentor firm under VA's Mentor-Protégé Program. The determination of affiliation is a function of the SBA.

**819.7104 General policy.**

(a) To be eligible, mentors and protégés must not be listed on the Excluded Parties List System, located at <http://www.epls.gov>. Mentors will provide appropriate developmental assistance to enhance the capabilities of protégés to perform as prime contractors and/or subcontractors.

(b) VA reserves the right to limit the number of participants in the program in order to ensure its effective management of the Mentor-Protégé Program.

**819.7105 Incentives for prime contractor participation.**

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(e), VA is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. FAR 19.202–1 provides additional guidance.

(b) Costs incurred by a mentor to provide developmental assistance, as described in 819.7110 to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a VA contract. If VA is the mentor's responsible audit agency under FAR 42.703–1, VA will consider these costs in determining indirect cost rates. If VA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to subparagraph (b) of this section, contracting officers shall give mentors evaluation credit under 852.219–52, Evaluation Factor for Participation in the VA Mentor-Protégé Program, considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing mentor-protégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under FAR 15.305(a)(2)(v) and determining contractor responsibility 19.705–5(a)(1).

(d) OSDBU Mentoring Award. A non-monetary award will be presented annually to the mentoring firm providing the most effective developmental support to a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the OSDBU Director.

(e) OSDBU Mentor-Protégé Annual Conference. At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on program progress.

**819.7106 Eligibility of Mentor and Protégé firms.**

Eligible business entities approved as mentors may enter into agreements (hereafter referred to as "Mentor-Protégé Agreement" or "Agreement" and explained in 819.7108) with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as mentors. Protégés may participate in the program in pursuit of a prime contract or as subcontractors under the mentor's prime contract with VA, but are not required to be a subcontractor to a VA prime contractor or be a VA prime contractor.

(a) *Eligibility.* A Mentor:

(1) May be either a large or small business entity and either a prime contractor or subcontractor;

(2) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and

(3) Will be encouraged to enter into arrangements with entities with which



it has established business relationships.

(b) *Eligibility.* A Protégé:

(1) Must be a SDVOSB or VOSB as defined in 802.101;

(2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to VA's Program should maintain a system for preparing separate reports of mentoring activity so that results of VA's Program can be reported separately from any other agency program.

(d) A protégé firm shall self-represent to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the VetBiz.gov VIP database. Protégés must maintain verified status throughout the term of the Mentor-Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

**819.7107 Selection of Protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of SDVOSB or VOSB firms whose core competencies support VA's mission; and choose SDVOSB and/or VOSB protégés in addition to firms with whom they have established business relationships.

(b) Mentors may have multiple protégés. However, to preserve the integrity of the Program and assure the quality of developmental assistance provided to protégés, VA reserves the right to limit the total number of protégés participating under each mentor firm for the Mentor-Protégé Program.

(c) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with the FAR and SBA regulations.

**819.7108 Application process.**

(a) Firms interested in becoming approved mentor-protégé participants must submit a joint written VA Mentor-Protégé Agreement to the VA OSDBU for review and approval. The proposed Mentor-Protégé Agreement will be evaluated on the extent to which the mentor plans to provide developmental assistance. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support.

(b) The Mentor-Protégé Agreement must contain:

(1) Names, addresses, phone numbers, and e-mail addresses (if available) of the mentor and protégé firm(s) and a point of contact for both mentor and protégé who will oversee the agreement;

(2) A statement from the protégé firm that the firm is currently eligible as a SDVOSB or VOSB to participate in VA's Mentor-Protégé Program;

(3) A description of the mentor's ability to provide developmental assistance to the protégé and the type of developmental assistance that will be provided, to include a description of the types and dollar amounts of subcontract work, if any, that may be awarded to the protégé firm;

(4) Duration of the Agreement, including rights and responsibilities of both parties (mentor and protégé), with bi-annual reviews;

(5) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the mentor or the protégé to notify the other firm and VA OSDBU in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(6) A schedule with milestones for providing assistance;

(7) Criteria for evaluation of the protégé's developmental success;

(8) A plan addressing how the mentor will increase the quality of the protégé firm's technical capabilities and contracting and subcontracting opportunities;

(9) An estimate of the total cost of the planned mentoring assistance to be provided to the Protégé;

(10) An agreement by both parties to comply with the reporting requirements of 819.7113;

(11) A plan for accomplishing unfinished work should the Agreement be voluntarily cancelled;

(12) Other terms and conditions, as appropriate; and

(13) Signatures and date(s).

(c) The Agreement defines the relationship between the mentor and the protégé firms only. The Agreement does not create any privity of contract between the mentor and VA or the protégé and VA.

#### **819.7109 VA review of application.**

(a) VA OSDBU will review the information to establish the mentor and protégé eligibility and to ensure that the information that is in VAAR 819.7108 is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDBU completes its review and provides written approval, the mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will post a copy of the Mentor-Protégé Agreements to a VA Web site to be accessible to VA contracting officers for review for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDBU will notify the mentor and protégé and request correction of deficiencies to be provided within 15 days.

#### **819.7110 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include, but are not limited to, the following:

- (a) Guidance relating to—
  - (1) Financial management;
  - (2) Organizational management;
  - (3) Overall business management/planning;
  - (4) Business development; and
  - (5) Technical assistance.
- (b) Loans.
- (c) Rent-free use of facilities and/or equipment.
- (d) Property.
- (e) Temporary assignment of personnel to a Protégé for training.
- (f) Any other types of permissible, mutually beneficial assistance.

#### **819.7111 Obligations under the Mentor-Protégé Program.**

(a) A mentor or protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract with VA.

(b) Mentors and protégés shall submit reports to VA OSDBU in accordance with 819.7113.

#### **819.7112 Internal controls.**

(a) OSDBU will oversee the Program and will work cooperatively with relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances applicable to the Program. These controls will include:

- (1) Reviewing and evaluating mentor applications for validity of the provided information;
- (2) Reviewing bi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the plan submitted in the approved Agreement;
- (3) Reviewing and evaluating financial reports and invoices submitted by the mentor to verify that VA is not charged by the mentor for providing developmental assistance to the protégé; and
- (4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to

insure the effective management of the Program.

(b) VA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in VA's best interest. The rescission shall be in writing and sent to the mentor and protégé after approval by the OSDBU Director. Rescission of an Agreement does not change the terms of any sub-contract between the mentor and the protégé.

**819.7113 Reports.**

(a) Mentor and protégé entities shall submit to VA's OSDBU bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

(1) Specific actions taken by the mentor during the evaluation period to increase the participation of their protégé(s) as suppliers to VA, other government agencies and to commercial entities;

(2) Specific actions taken by the mentor during the evaluation period to develop technical and administrative expertise of a protégé as defined in the Agreement;

(3) The extent to which the protégé has met the developmental objectives in the Agreement;

(4) The extent to which the mentor's participation in the Mentor-Protégé Program impacted the protégé's ability to receive contract(s) and sub-contract(s) from private firms and federal agencies other than VA; and, if deemed necessary;

(5) Input from the protégé on the nature of the developmental assistance provided by the mentor.

(b) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor(s)' performance in the Program.

(c) In addition to the written progress report in paragraph (a) of this section, at the mid-term point in the Mentor-Protégé Agreement, the mentor and the protégé shall formally brief the VA OSDBU regarding program accomplishments as pertains to the approved agreement.

(d) Mentor and protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon

Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

**819.7114 Measurement of program success.**

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the quality of the technical capabilities of the protégé firm.

(b) An increase in the number and dollar value of contract and sub-contract awards to protégé firms since the time of their entry into the program attributable to the mentor-protégé relationship (under VA contracts, contracts awarded by other Federal agencies and under commercial contracts.)

**819.7115 Solicitation provisions.**

(a) Insert 852.219-71, VA Mentor-Protégé Program, in solicitations that include FAR clause 52.219-9, Small Business Subcontracting Plan.

(b) Insert 852.219-72, Evaluation Factor for Participation in the VA Mentor-Protégé Program, in solicitations that include an evaluation factor for participation in VA's Mentor-Protégé Program in accordance with 819.7105 and that also include FAR clause 52.219-9, Small Business Subcontracting Plan.

**PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**Subpart 822.3—Contract Work Hours and Safety Standards Act**

Sec.

822.304 Variations, tolerances, and exemptions.

822.305 Contract clause.

**Subpart 822.4 [Reserved]**

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 29 CFR 5.15(d); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### **Subpart 822.3—Contract Work Hours and Safety Standards Act**

#### **822.304 Variations, tolerances, and exemptions.**

For contracts providing nursing home care for veterans, the Secretary of Labor has allowed a variation to the requirements of Contract Work Hours and Safety Standards (the statute) (40 U.S.C. 3701, *et seq.*) regarding the payment of overtime (see 29 CFR 5.15(d)(2)). The variation provides that overtime may be calculated on a basis other than a 40 hour workweek (as an alternate work period) when—

(a) Due to operational necessity or convenience a work period of 14 consecutive days may be accepted in lieu of the workweek of 7 consecutive days for the purpose of computing overtime compensation, pursuant to an agreement or understanding arrived at between the contractor and the contractors' employees before performance of the work; and

(b) If The contractor's employees receive compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended

[83 FR 16209, Apr. 16, 2018]

#### **822.305 Contract clause.**

The contracting officer shall insert the clause at 852.222–70, Contract Work Hours and Safety Standards—Nursing Home Care for Veterans, in solicitations and contracts for nursing home care for veterans. The contractor shall flow down this clause and insert in all subcontracts, at any tier.

[83 FR 16209, Apr. 16, 2018]

### **Subpart 822.4 [Reserved]**

## **PART 823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

### **Subpart 823.1—Sustainable Acquisition Policy**

Sec.

823.103–70 Policy.

823.103–71 Solicitation provision.

### **Subpart 823.3—Hazardous Material Identification and Material Safety Data**

823.300 Scope of subpart.

823.303–70 Contract clause.

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

SOURCE: 84 FR 45681, Aug. 30, 2019, unless otherwise noted.

### **Subpart 823.1—Sustainable Acquisition Policy**

#### **823.103–70 Policy.**

(a) For new contracts and orders above the micro-purchase threshold, contracting officers may insert a solicitation provision to include an evaluation factor for an offeror's Sustainable Acquisition Plan.

(b) When a solicitation includes the provision at 852.223–70, Instruction to Offerors—Sustainable Acquisition Plan, offerors shall include a Sustainable Acquisition Plan in their technical proposal addressing the sustainable products and services for delivery under any resulting contract.

#### **823.103–71 Solicitation provision.**

The contracting officer shall insert the provision at 852.223–70, Instruction to Offerors—Sustainable Acquisition Plan, in solicitations above the micro-purchase threshold.

### **Subpart 823.3—Hazardous Material Identification and Material Safety Data**

#### **823.300 Scope of subpart.**

This subpart provides a contract clause for use in administering safety and health requirements.

**823.303-70 Contract clause.**

Contracting officers shall insert clause 852.223-71, Safety and Health, in solicitations and contracts that involve hazardous materials for the following types of requirements:

- (a) Research, development, or test projects.
- (b) Transportation of hazardous materials.
- (c) Construction.

**PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**Subpart 824.1—Protection of Individual Privacy**

Sec.

824.102 General.

824.103 Procedures.

**Subpart 824.2—Freedom of Information Act**

824.203 Policy.

AUTHORITY: 5 U.S.C. 552a; 40 U.S.C. 121(c); 41 U.S.C. 1121(c); 41 U.S.C. 1702; 38 CFR 1.550-1.562 and 1.575-1.584; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

**Subpart 824.1—Protection of Individual Privacy**

**824.102 General.**

VA rules implementing the Privacy Act of 1974 are in 38 CFR 1.575 through 1.584, Safeguarding Personal Information in Department of Veterans Affairs Records.

[84 FR 45681, Aug. 30, 2019]

**824.103 Procedures.**

(c) The contracting officer shall reference the following documents in solicitations and contracts that require the design, development, or operation of a system of records—

(1) VA Handbook 6500.6, Contract Security;

(2) VA Handbook 6508.1, Procedures for Privacy Threshold Analysis and Privacy Impact Assessment;

(3) VA Handbook 6510, VA Identity and Access Management—

(i) The contracting officer will ensure that statements of work or perform-

ance work statements that require the design, development, or operation of a system of records include procedures to follow in the event of a Personally Identifiable Information (PII) breach; and

(ii) The contracting officer shall ensure that Government surveillance plans for contracts that require the design, development, or operation of a system of records include monitoring of the contractor's adherence to Privacy Act/PII regulations. The assessing official should document contractor-caused breaches or other incidents related to PII in past performance reports. Such incidents include instances in which the contractor did not adhere to Privacy Act/PII contractual requirements.

[84 FR 45681, Aug. 30, 2019]

**Subpart 824.2—Freedom of Information Act**

**824.203 Policy.**

(a) VA rules implementing the Freedom of Information Act (FOIA) are in 38 CFR 1.550 through 1.562.

(b) Upon receipt of a request, the contracting officer shall provide the requester with the name of the cognizant VA FOIA Service Office. The VA FOIA Service Office (see <http://www.oprm.va.gov/foia/>) is the focal point for all FOIA requests and official information may only be released through the cognizant FOIA Service or their authorized designee.

[84 FR 45681, Aug. 30, 2019]

**PART 825 [Reserved]**

**PART 826—OTHER SOCIOECONOMIC PROGRAMS**

**Subpart 826.2—Disaster or Emergency Assistance Activities**

Sec.

826.202-1 Local area set-aside.

826.202-2 Evaluation preference.

AUTHORITY: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; 38 CFR 1.550-1.562 and 1.575-1.584; and 48 CFR 1.301-1.304.

SOURCE: 84 FR 45682, Aug. 30, 2019, unless otherwise noted.

**Subpart 826.2—Disaster or  
Emergency Assistance Activities**

**826.202-1 Local area set-aside.**

(c) The contracting officer shall determine whether a local area set-aside should be further restricted to verified Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs) pursuant to subpart 819.70.

**826.202-2 Evaluation preference.**

Pursuant to 38 U.S.C. 8128, the contracting officer shall include evaluation factors in accordance with 815.304 and the evaluation criteria clause prescribed at 815.304-71(a), 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 828—BONDS AND INSURANCE

#### Subpart 828.1—Bonds and Other Financial Protections

Sec.

828.106 Administration.

828.106-70 Bond premium adjustment.

828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

828.106-72 Contract provision.

#### Subpart 828.2 [Reserved]

#### Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

#### Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

828.7000 Scope of subpart.

828.7001 Extent of indemnification.

828.7002 Financial protection.

828.7003 Indemnification clause.

AUTHORITY: 38 8127-8128 and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C 1121; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### Subpart 828.1—Bonds and Other Financial Protections

##### 828.106 Administration.

##### 828.106-70 Bond premium adjustment.

The contracting officer shall insert the clause at 852.228-70, Bond Premium Adjustment, in solicitations and contracts when performance and payment bonds or payment protection is required.

[83 FR 7404, Feb. 21, 2018]

##### 828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

VA prime contractors are encouraged to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist

their protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

[74 FR 64636, Dec. 8, 2009]

##### 828.106-72 Contract provision.

Insert 852.228-72, Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds, in solicitations that include FAR clause 52.228-1, Bid Guarantee.

[74 FR 64636, Dec. 8, 2009]

#### Subpart 828.2 [Reserved]

#### Subpart 828.3—Insurance

##### 828.306 Insurance under fixed-price contracts.

(a) The contracting officer shall insert the provision at 852.228-71, Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service.

(b) Paragraph (a) of this section does not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3, or other emergency or sporadic vehicle or aircraft services if both of the following conditions exist:

(1) The service is not used solely for the purpose of avoiding entering into a continuing contract.

(2) The services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

[73 FR 2717, Jan. 15, 2008, as amended at 83 FR 7404, Feb. 21, 2018]

#### Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

SOURCE: 83 FR 7404, Feb. 21, 2018, unless otherwise noted.

**828.7000 Scope of subpart.**

(a) As used in this subpart, the term “contractor” includes subcontractors of any tier under a contract containing an indemnification provision under 38 U.S.C. 7317.

(b) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts involving medical research or research and development that involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(c) The authority to indemnify the contractor under this subpart does not create any rights to third parties that do not exist by law.

**828.7001 Extent of indemnification.**

(a) A contract for medical research or development authorized by 38 U.S.C. 7303, may provide that the Government will indemnify the contractor against losses or liability specified in paragraphs (b) and (c) of this section if all of the following apply:

(1) The contract work involves a risk of an unusually hazardous nature.

(2) The losses or liability arise out of the direct performance of the contract.

(3) The losses or liability are not covered by the financial protection required under 828.7002.

(b) The Government may indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third persons for death, bodily injury, or loss of or damage to property from a risk that the contract defines as unusually hazardous. The indemnification will not cover liability under State or Federal worker’s injury compensation laws to employees of the contractor who are both:

(1) Employed at the site of the contract work; and

(2) Working on the contract for which indemnification is granted.

(c) The Government may indemnify the contractor for loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(d) A contract that provides for indemnification in accordance with this subpart must also require that:

(1) The contractor must notify the contracting officer of any claim or suit against the contractor for death, bodily

injury, or loss of or damage to property; and

(2) The Government may choose to control or assist in the defense of any suit or claim for which indemnification is provided in the contract. (38 U.S.C. 7317)

**828.7002 Financial protection.**

(a) A contractor shall have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the contractor’s property that meets one of the following:

(1) The maximum amount of insurance available from private sources; or

(2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(b) Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination that provides the maximum amount required. If a contractor elects to self-insure, the contractor must provide the contracting officer, before award, proof of financial responsibility up to the maximum amount required. (38 U.S.C. 7317)

**828.7003 Indemnification clause.**

The contracting officer shall include the clause, 852.228–72, “Indemnification of Contractor—Hazardous Research Projects” in contracts and solicitations that indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third person for death, bodily injury, or loss of or damage to property from a risk that the contract defines in the performance work statement, the statement of work, or the statement of objectives as unusually hazardous.

**PART 829—TAXES**

Sec.

829.000 Scope of part.

**Subpart 829.2—Federal Excise Taxes**

829.203 Other Federal tax exemptions.

829.203–70 Tax exemptions for alcohol products.



## Department of Veterans Affairs

829.303

### Subpart 829.3—State and Local Taxes

829.303 Application of State and local taxes to Government contractors and subcontractors.

AUTHORITY: 26 U.S.C. 5214(a)(2), 5271, 7510; 40 U.S.C. 121(c); 41 U.S.C. 1303(a)(2); 41 U.S.C. 1702 and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### 829.000 Scope of part.

This part states the policies and procedures for the following:

(a) Exemptions of alcohol products purchased for use by the VA medical care program from Federal excise taxes.

(b) Specified refund procedures for State and local taxes.

### Subpart 829.2—Federal Excise Taxes

SOURCE: 83 FR 48258, Sept. 24, 2018, unless otherwise noted.

#### 829.203 Other Federal tax exemptions.

##### 829.203–70 Tax exemptions for alcohol products.

(a) *General.* (1) Pursuant to 26 U.S.C. 5214(a)(2) and 26 U.S.C. 5271, VA may purchase spirits using a tax exemption as provided by Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR parts 1 through 39). As stated in 27 CFR 19.426, agencies of the United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on form TTB F 5150.33 or must have a previously issued permit on ATF Form 1444.

(2) When purchasing spirits under a tax exemption, the contracting officer shall indicate in the contract document the basis for the exemption and make a copy of the permit available to the contractor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated or as directed by the contracting officer.

(3) Department of Veterans Affairs activities that require spirits free of tax for beverage purposes under 26

U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee.

(b) *Specially denatured spirits or spirits free of tax for nonbeverage purposes.* Contracting officers may make purchases of excise tax-free spirits, including denatured alcohol and specially denatured alcohol only from qualified distillery plants or bonded dealers.

(1) Permits previously issued on Alcohol, Tobacco, and Firearms (ATF) Form 1444, Tax-Free Spirits for Use of United States, remain valid until surrendered or cancelled.

(2) A copy of the current ATF Form 1444 or TTB Form 5150.33 shall be made available to the supplier with the initial order. The permit number only needs to be referenced on any future orders with the same supplier.

(c) *Wine.* No tax exemption form or ATF/TTB permit is required for the tax-free procurement of wine from bonded wine premises. The purchase order must show the kind, quantity, and alcohol content of the wine and must state the purpose for which wine is to be used (see 27 CFR 24.293). An extra copy of a properly executed purchase order may be furnished to the bonded wine premises from which wine is purchased to facilitate record keeping. The order must be signed by the head of the contracting activity or their designee.

[83 FR 48259, Sept. 24, 2018]

### Subpart 829.3—State and Local Taxes

#### 829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (HCA).

[83 FR 48259, Sept. 24, 2018]

## PART 830—COST ACCOUNTING STANDARDS ADMINISTRATION [RESERVED]

## PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 831.70—Contract Cost Principles and Procedures for Veterans Services

Sec.

831.7000 Scope of subpart.

831.7000–1 Definitions.

831.7001 Allowable costs and negotiated prices under vocational rehabilitation and education contracts.

831.7001–1 Tuition.

831.7001–2 Special services or courses.

831.7001–3 Books, supplies, and equipment required to be personally owned.

831.7001–4 Medical services and hospital care.

831.7001–5 Consumable instructional supplies.

831.7001–6 Reimbursement for other supplies and services.

AUTHORITY: 38 U.S.C. chapter 31; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

SOURCE: 83 FR 46414, Sept. 13, 2018, unless otherwise noted.

### Subpart 831.70—Contract Cost Principles and Procedures for Veterans Services

#### 831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs or negotiation of prices under cost reimbursement or fixed-price contracts for providing vocational rehabilitation, education, and training to eligible Veterans under 38 U.S.C. chapter 31, (referred to as a “chapter 31 program”). This subpart applies to contracts with educational institutions as well as to contracts with commercial and non-profit organizations.

#### 831.7000–1 Definitions.

*Chapter 31* refers to the vocational rehabilitation and employment (VR&E) program that provides training and rehabilitation for Veterans with service-connected disabilities under chapter 31 of Title 38 U.S.C.

*Consumable instructional supplies* means those supplies which are required for instruction in the classroom, shop school, and laboratory of an educational institution, which are consumed, destroyed, or expended by ei-

ther the student, instructor or both in the process of use, and which have to be replaced at frequent intervals without adding to the value of the institution’s physical property.

*Similarly circumstanced non-Veteran student* means a student in equal or like situations as a person who is neither receiving educational or training benefits under chapter 31 or chapter 33 of Title 38 U.S.C. or the savings provisions of section 12(a) of Public Law 85–857, nor having all or any part of tuition fees or other charges paid by the educational institution.

*Work adjustment training* means a specialized structure program that is facility or community based and designated to assist an individual in acquiring or improving work skills, work behaviors, work tolerance, interpersonal skills or work ethics.

#### 831.7001 Allowable costs and negotiated prices under vocational rehabilitation and education contracts.

##### 831.7001–1 Tuition.

(a) Tuition and enrollment fees shall be paid at the institution’s customary amount that—

(1) Does not exceed the tuition charged to similarly circumstanced non-Veteran students; and

(2) Is equal to the lowest price offered or published for the entire course, semester, quarter, or term.

(b) The cost of the Veteran student’s tuition and fees under a contract shall be offset by—

(1) Any amount of tuition and fees that are waived by a State or other government authority; or

(2) Any amounts the Veteran student receives from a fellowship, scholarship, grant-in-aid, assistantship, or similar award that limits its use to payment of tuition, fees, or other charges that VA normally pays as part of a chapter 31 program.

(c) VA will not pay tuition or incidental fees to institutions or establishments furnishing apprentice or on-the-job training. VA may elect to pay charges or expenses that fall into either of the following categories:

(1) Charges customarily made by a nonprofit workshop or similar establishment for providing work adjustment training to similarly

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circumstanced non-Veteran students even if the trainee receives an incentive wage as part of the training.

(2) Training expenses incurred by an employer who provides on-the-job training following rehabilitation to the point of employability when VA determines that the additional training is necessary.

### 831.7001-2 Special services or courses.

Special services or courses are those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students, and that the contracting officer considers them to be necessary for the rehabilitation of the trainee. VA will negotiate the costs/prices of special services or courses prior to ordering them.

### 831.7001-3 Books, supplies, and equipment required to be personally owned.

(a) *Reimbursement for books, supplies, and equipment.* VA will provide reimbursement for books, equipment, or other supplies of the same variety, quality, or amount that all students taking the same course or courses are customarily required to own personally. VA will provide reimbursement for items that the institution does not specifically require for pursuit of the course if VA determines that such items are needed because of the demands of the course, general possession by other students, and the disadvantage imposed on a Veteran student by not having the item.

(b) *Partial payment agreements.* Agreements in which VA would pay the institution a partial payment with the remainder to be paid by the Veteran student are not authorized.

(c) *Thesis expenses.* The institution's costs in connection with a Veteran student's thesis are considered supplies and are therefore authorized for reimbursement if the Veteran student's committee chairman, major professor, department head, or appropriate dean certifies that the thesis is a course requirement and the expenses are required to complete the thesis. These expenses may include research expenses, typing, printing, microfilming,

or otherwise reproducing the required number of copies.

(d) *Reimbursement for books, supplies, and equipment.* Books, supplies, and equipment that the institution purchases specifically for trainees will be reimbursed at the net cost to the institution. The VA shall reimburse the institution for books, supplies, and equipment when these items are—

(1) Issued to students from its own bookstore or supply store;

(2) Issued to students from retail stores or other non-institutionally owned establishments not owned by the contractor/institution but arranged or designated by them in cooperation with VA; or

(3) Rented or leased books, supplies and equipment and are issued to students for survey classes when it is customary that students are not required to own the books.

(e) *Handling charges.* VA shall reimburse the institution for any handling charges not to exceed more than 10 percent of the allowable charge for the books, equipment or other supplies unless—

(1) The tuition covers the charges for supplies or rentals or a stipulated fee is assessed to all students; or

(2) The handling charge is for Government-owned books that the contractor procures from the Library of Congress.

### 831.7001-4 Medical services and hospital care.

(a) VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced non-Veteran students. If payment of the fee is not required for similarly circumstanced non-Veteran students, payment may be made if VA determines that payment is in the best interest of the Veteran student and the Government.

(b) When the customary Veteran student's health fee does not cover medical services or hospital care, but these medical services are available in an institution-operated facility or with doctors and hospitals in the immediate area through a prior arrangement, VA may provide reimbursement for these services in a contract for the services if—

## **831.7001-5**

(1) An arrangement is necessary to provide timely medical services for Veteran-students attending the facility under provisions of chapter 31; and

(2) The general rates established for medical services do not exceed the rates established by VA.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a Veteran student's program at the facility.

### **831.7001-5 Consumable instructional supplies.**

(a) VA will provide reimbursement for consumable instructional supplies that the institution requires for the instruction of all students, Veteran or non-Veteran students, pursuing the same or comparable course or courses when—

(1) The supplies are entirely consumed in the fabrication of a required project; or

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse by disassembling or dismantling the end product.

(b) VA will not provide reimbursement for consumable instructional supplies if any of the following apply:

(1) The supplies can be salvaged for reuse.

(2) The supplies are used in a project that the student has elected as an alternate class project to produce an end product of greater value than that normally required to learn the skills of the occupation, and the end product will become the Veteran's property upon completion.

(3) The supplies are used in a project that the institution has selected to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the Veteran student to elect a particular course of study.

(4) The sale value of the end product is equal to or greater than the cost of supplies plus assembly, and the supplies have not been reasonably used so that the supplies are not readily salvaged from the end product to be re-used for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

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(6) A third party loans the articles or equipment for repair or improvement and the third party would otherwise pay a commercial price for the repair or improvement.

(7) The number of projects resulting in end products exceeds the number normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies is included in the charge for tuition or as a fee designated for such purpose.

### **831.7001-6 Reimbursement for other supplies and services.**

VA will provide reimbursement for other services and assistance that may be authorized under applicable provisions of 38 U.S.C. chapter 31 regulations, including, but not limited to, employment and self-employment services, initial and extended evaluation services, and independent living services.

## **PART 832—CONTRACT FINANCING**

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### Subpart 832.70—Electronic Invoicing Requirements

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832.7001 Electronic payment requests.

832.7001-1 Data transmission.

832.7001-2 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### 832.001 Definitions.

As used in this part:

(a) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment.

(b) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in 832.7002-1. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(c) *Payment request* means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

[83 FR 49305, Oct. 1, 2018]

### 832.006 Reduction or suspension of contract payments upon finding of fraud.

#### 832.006-1 General.

(b) The Senior Procurement Executive (SPE) is authorized to make determinations that there is substantial evidence that contractors' requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in FAR 32.006.

[83 FR 49305, Oct. 1, 2018]

### 832.006-4 Procedures.

(b) The Remedy Coordination Official (RCO) for VA is the Deputy Senior Procurement Executive (DSPE) who shall carry out the responsibilities of the Secretary or designee in FAR 32.006-4(b).

(e) The RCO shall carry out the responsibilities of the agency head in FAR 32.006-4(e) to notify the contractor of the reasons for the recommended action and of its right to submit information within a reasonable period of time in response to the proposed action under FAR 32.006.

(1) The notice of proposed action will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the RCO to present information or argument in person or through a representative and may supplement the oral presentation with written information and argument.

(2) The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the RCO does not receive a reply from the contractor within 30 calendar days, the RCO will base his or her recommendations on the information available. Any recommendation of the RCO under FAR 31.006-4(a) and paragraph (b) of this section, must address the results of this notification and the information, if any, provided by the contractor. After reviewing all the information, the RCO shall make a recommendation to the SPE whether or not substantial evidence of fraud exists.

(g) In addition to following the procedures in FAR 32.006-4, the SPE shall provide a copy of each final determination and the supporting documentation to the contractor, the RCO, the contracting officer, and the Office of the Inspector General (OIG). The contracting officer will place a copy of the

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determination and the supporting documentation in the contract file.

[83 FR 49305, Oct. 1, 2018]

### **Subpart 832.1—Non-Commercial Item Purchase Financing**

#### **832.111 Contract clauses for non-commercial purchases.**

##### **832.111-70 VA contract clauses for non-commercial purchases.**

(a)(1) Insert the clause at 852.232-70, Payments Under Fixed-Price Construction Contracts (Without NAS-CPM) in solicitations and contracts that contain the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract does not require use of the “Network Analysis System—Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b)(1) Insert the clause at 852.232-71, Payments Under Fixed-Price Construction Contracts (Including NAS-CPM), in solicitations and contracts that contain the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract requires use of the “Network Analysis System—Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

[83 FR 49306, Oct. 1, 2018]

### **Subpart 832.2—Commercial Item Purchase Financing**

#### **832.202 General.**

##### **832.202-1 Policy.**

(d) HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts for commercial items with unusual contract financing or with commercial interim or advance payments approved for the previous fiscal year. The report shall include the contract number and amount, the amount

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of the unusual contract financing or with commercial interim or advance payments approved, and the kind and amount of security obtained for the advance.

[83 FR 49306, Oct. 1, 2018]

#### **832.202-4 Security for Government financing.**

(a)(2) An offeror’s financial condition may be considered adequate security to protect the Government’s interest when the Government provides contract financing. In assessing the offeror’s financial condition, the contracting officer may obtain, to the extent required, the following information—

(i) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm;

(ii) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash within the firm or branch performing the contract;

(iii) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor’s exposure to financial risk, and credit arrangements;

(iv) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions;

(v) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business; and

(vi) Any other financial information deemed necessary.

[83 FR 49306, Oct. 1, 2018]

**Subpart 832.4—Advance Payments for Non-Commercial Items**

**832.402 General.**

(c)(1)(iii) The authority to make the determination required by FAR 32.402(c)(1)(iii) and to approve contract terms is delegated to the head of the contracting activity (HCA). The request for approval shall include the information required by FAR 32.409-1 and shall address the standards for advance payment in FAR 32.402(c)(2). HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on number of contracts for non-commercial items with advance payments approved in the previous fiscal year. The report shall include the contract number and amount, the amount of the advance payment, and the kind and amount of security obtained for the advance.

[83 FR 49306, Oct. 1, 2018]

**832.404 Exclusions.**

(b)(1) As permitted by 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term “other publications” includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(2) As permitted by 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(3) As permitted by 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees, including obtaining professional credentials under 5 U.S.C. 5757, in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

[83 FR 49306, Oct. 1, 2018]

**Subparts 832.5—832.8 [Reserved]**

**Subpart 832.9—Prompt Payment**

**832.904-70 Determining payment due dates for small businesses.**

Pursuant to Office of Management and Budget Memorandum M-11-32, Accelerating Payments to Small Businesses for Goods and Services, contracting officers shall, to the full extent permitted by law, make payments to small business contractors as soon as practicable, with the goal of making payments within 15 days of receipt of a proper invoice and confirmation that the goods and services have been received and accepted by the Federal Government.

[83 FR 49306, Oct. 1, 2018]

**Subpart 832.11 [Reserved]**

**Subpart 832.70—Electronic Invoicing Requirements**

SOURCE: 83 FR 49306, Oct. 1, 2018, unless otherwise noted.

**832.7000 General.**

This subpart prescribes policy requirements for submitting and processing payment requests in electronic form.

**832.7001 Electronic payment requests.**

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for—

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

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(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

### 832.7001-1 Data transmission.

The contractor shall submit electronic payment requests through—

(a) VA's Electronic Invoice Presentation and Payment System at the current website address provided in the contract; or

(b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI).

### 832.7001-2 Contract clause.

The contracting officer shall insert the clause at 852.232-72, Electronic Submission of Payment Requests, in solicitations and contracts exceeding the micro-purchase threshold, except those for which the contracting officer has directed otherwise under 832.7001, and those paid with a Governmentwide commercial purchase card.

## PART 833—PROTESTS, DISPUTES, AND APPEALS

### Subpart 833.1—Protests

Sec.

833.103-70 Protests to VA.

833.106-70 Solicitation provisions.

### Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

833.211 Contracting officer's decision.

833.213 Obligation to continue performance.

833.214 Alternative dispute resolution (ADR).

833.215 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; 41 U.S.C. chapter 71; and 48 CFR 1.301-1.304.

SOURCE: 83 FR 46416, Sept. 13, 2018, unless otherwise noted.

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### Subpart 833.1—Protests

#### 833.103-70 Protests to VA.

(a) *Agency protests.* Pursuant to FAR 33.103(d)(4), an interested party may protest to the contracting officer or, as an alternative, may request an independent review at a level above the contracting officer as provided in this section. An interested party may also appeal to VA a contracting officer's decision on a protest.

(1) *Protests to the contracting officer.* Protests to the contracting officer shall be in writing and shall be addressed where the offer/bid is to be submitted or as indicated in the solicitation.

(2) *Independent review or appeal of a contracting officer decision—protest filed directly with the agency.* (i) Protests requesting an independent review a level above the contracting officer, and appeals within VA above the level of the contracting officer, shall be addressed to: Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (RMCS), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(ii) The protest and pertinent documents shall be mailed to the address in paragraph (a)(2)(i) of this section or sent electronically to: [EDProtests@va.gov](mailto:EDProtests@va.gov).

(3) An independent review of a protest filed pursuant to paragraph (a)(2) of this section will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(b) *Agency actions on specific types of protests.* The following types of protests may be dismissed by VA without consideration of the merits or may be forwarded to another agency for appropriate action:

(1) *Contract administration.* Disputes between a contractor and VA are resolved under the disputes clause see the Dispute statute, 41 U.S.C. chapter 71.

(2) *Small business size standards and standard industrial classification.* Challenges of established size standards, ownership and control or the size status of particular firm, and challenges



of the selected standard industrial classification are for review solely by the Small Business Administration (SBA) (see 15 U.S.C. 637(b)(6); 13 CFR 121.1002). Pursuant to Public Law 114-328, SBA will also hear cases related to size, status, and ownership and control challenges under the VA Veterans First Contracting Program (see 38 U.S.C. 8127(f)(8)).

(3) *Small business certificate of competency program.* A protest made under section 8(b)(7) of the Small Business Act, or in regard to any issuance of a certificate of competency or refusal to issue a certificate under that section, is not reviewed in accordance with bid protest procedures unless there is a showing of possible fraud or bad faith on the part of Government officials.

(4) *Protests under section 8(a) of the Small Business Act.* The decision to place or not to place a procurement under the 8(a) program is not subject to review unless there is a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated (see 15 U.S.C. 637(a)).

(5) *Affirmative determination of responsibility by the contracting officer.* An affirmative determination of responsibility will not be reviewed unless there is a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) *Contracts for materials, supplies, articles, and equipment exceeding \$15,000.* Challenges concerning the legal status of a firm as a regular dealer or manufacturer within the meaning of 41 U.S.C. chapter 65 are determined solely by the procuring agency, the SBA (if a small business is involved), and the Secretary of Labor (see FAR subpart 22.6).

(7) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where VA determines it is in the interest of the Government.

(8) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(c) *Alternative dispute resolution.* Bidders/offers and VA contracting offi-

cers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, VA will not furnish any documentation in an ADR proceeding beyond what is allowed by the FAR.

(d) *Appeal of contracting officer's protest decision—agency appellate review.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal in accordance with paragraph (a)(2) of this section.

(1) To be considered timely, the appeal must be received by the cognizant official in paragraph (a)(2) of this section within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal.

(2) Appeals do not extend the Government Accountability Office's (GAO) timeliness requirements for protests to GAO. By filing an appeal as provided in this paragraph (d), an interested party may waive its rights to further protest to the Comptroller General at a later date.

(3) Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (OGC).

#### **833.106-70 Solicitation provisions.**

(a) The contracting officer shall insert the provision at 852.233-70, Protest Content/Alternative Dispute Resolution, in solicitations expected to exceed the simplified acquisition threshold, including those for commercial items.

(b) The contracting officer shall insert the provision at 852.233-71, Alternate Protest Procedure, in solicitations expected to exceed the simplified acquisition threshold, including those for commercial items.

### **Subpart 833.2—Disputes and Appeals**

#### **833.209 Suspected fraudulent claims.**

The contracting officer must refer matters relating to suspected fraudulent claims to the Office of Inspector General for investigation and potential referral to the Department of Justice.

### **833.211**

The contracting officer may not initiate any collection, recovery, or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Office of the Inspector General.

#### **833.211 Contracting officer's decision.**

(a) For purposes of appealing a VA contracting officer's final decision, the Board of Contract Appeals referenced in FAR 33.211(a) and elsewhere in this subpart is the Civilian Board of Contract Appeals (CBCA), 1800 F Street NW, Washington, DC 20405.

#### **833.213 Obligation to continue performance.**

(a) As provided in FAR 33.213, contracting officers shall use FAR clause 52.233-1, Disputes, or with its Alternate I. FAR clause 52.233-1 requires the contractor to continue performance in accordance with the contracting officer's decision in the event of a claim arising *under* a contract. Alternate I expands this authority, adding a requirement for the contractor to continue performance in the event of a claim *relating* to the contract.

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(b) In the event of a dispute not arising under, but relating to, the contract, as permitted by FAR 33.213(b), if the contracting officer directs continued performance and considers providing financing for such continued performance, the contracting officer shall contact OGC for advice prior to requesting higher level approval for or authorizing such financing. The contracting officer shall document in the contract file any required approvals and how the Government's interest was properly secured with respect to such financing (see FAR 32.202-4 and VAAR subpart 832.2).

#### **833.214 Alternative dispute resolution (ADR).**

Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures. Guidance on ADR may be obtained at the U.S. Civilian Board of Contract Appeals website: <http://www.cbca.gsa.gov>.

#### **833.215 Contract clauses.**

The contracting officer shall use the clause at 52.233-1, Disputes, or with its Alternate I (see 833.213).

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### Subpart 836.2—Special Aspects of Contracting for Construction

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836.521 Specifications and drawings for construction.

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836.603 Collecting data on and appraising firms' qualifications.

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836.606-70 Architect-engineer firms' proposal.

836.606-71 Application of 6 percent architect-engineer fee limitation.

#### Subpart 836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

836.7000 Scope of subpart.

836.7001 Unique construction and architect-engineer services forms.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 1303(a)(2) and 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 836.2—Special Aspects of Contracting for Construction

#### 836.202 Specifications.

##### 836.202-70 Specifications—use of equal products.

Upon approval of the justification documentation required by FAR 11.105, Items peculiar to one manufacturer, the contracting officer shall include the clause found at 852.236-90, Restriction on Submission and Use of Equal Products, in solicitations and contracts. The contracting officer shall complete the clause by inserting the items which have been approved for restriction to a brand name. This clause also places offerors or bidders on notice that the “brand name” provisions of any clause or provision that may authorize the submission of an “equal” product, shall not apply to the specific items listed in clause 852.236-90.

[84 FR 9971, Mar. 19, 2019]

#### 836.203 Government estimate of construction costs.

##### 836.203-70 Protection of the independent government estimate—sealed bid.

For sealed bid acquisitions the contracting officer or bid custodian is not authorized to release the basis for calculating the estimate at any time. The person preparing the independent government estimate (IGE) shall—

(a) Designate the IGE as “For Official Use Only (FOUO)”;

(b) The contracting officer or bid custodian shall file a sealed copy of the IGE with the bids. (In the case of two-step acquisitions, the contracting officer or bid custodian accomplishes this during the second step);

(c) After the bids are read and recorded during a Public Bid Opening, remove the “For Official Use Only (FOUO)” designation then read and record the estimate as if it were a bid, in the same detail as the bids; and

(d) In instances where only one bid has been received, the government estimate shall not be read by the contracting officer as it may be needed to conduct negotiations with the offeror.

[84 FR 9972, Mar. 19, 2019]

**836.204 Disclosure of the magnitude of construction projects.**

The contracting officer shall utilize the estimated price ranges defined in FAR 36.204(a) through (e) as further supplemented below when identifying the magnitude of a VA project in advance notices and solicitations:

(f) For estimated price ranges between \$1,000,000 and \$5,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of the following price ranges:

(1) Between \$1,000,000 and \$2,000,000.

(2) Between \$2,000,000 and \$5,000,000.

(g) Between \$5,000,000 and \$10,000,000.

(h) For estimated price ranges greater than \$10,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:

(1) Between \$10,000,000 and \$20,000,000.

(2) Between \$20,000,000 and \$50,000,000.

(3) Between \$50,000,000 and \$100,000,000.

(4) Between \$100,000,000 and \$150,000,000.

(5) Between \$150,000,000 and \$200,000,000.

(6) Between \$200,000,000 and \$250,000,000.

(7) More than \$250,000,000.

[84 FR 9972, Mar. 19, 2019]

**Subpart 836.5—Contract Clauses**

**836.500 Scope of subpart.**

The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those prescribed in FAR subpart 36.5.

[84 FR 9972, Mar. 19, 2019]

**836.501 Performance of work by the contractor.**

The contracting officer shall insert the clause at 852.236–72, Performance of Work by the Contractor, in solicita-

tions and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor, except those awarded pursuant to subpart 819.70. When the solicitations or contracts include a section entitled “Network Analysis System (NAS),” the contracting officer shall use the clause with its Alternate I.

[84 FR 9972, Mar. 19, 2019]

**836.521 Specifications and drawings for construction.**

The contracting officer shall insert the clause at 852.236–71, Specifications and Drawings for Construction, in solicitations and contracts for construction that include the FAR clause at 52.236–21, Specifications and Drawings for Construction.

[84 FR 9972, Mar. 19, 2019]

**836.573 Contractor production report.**

The contracting officer shall insert the clause at 852.236–79, Contractor Production Report, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

[84 FR 9972, Mar. 19, 2019]

**836.574 Subcontracts and work coordination.**

The contracting officer shall insert the clause at 852.236–80, Subcontracts and Work Coordination, in invitations for bids and contracts for construction expected to exceed the micro-purchase threshold for construction. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

[84 FR 9972, Mar. 19, 2019]

**836.580 Notice to bidders—additive or deductive bid line items.**

The contracting officer may include the provision 852.236–92, Notice to Bidders—Additive or Deductive Bid Line

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Items, in invitations for bids when the contracting officer determines that funds may not be available for all the desired construction features at contract award.

[84 FR 9972, Mar. 19, 2019]

### Subpart 836.6—Architect-Engineer Services

#### 836.603 Collecting data on and appraising firms' qualifications.

The Associate Executive Director, Office of Facilities Engineering, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration; the Senior Executive Service (SES) official for Administration and Facilities for Veterans Benefits Administration; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 330 and maintaining a data file on architect-engineer qualifications.

[84 FR 9973, Mar. 19, 2019]

#### 836.606 Negotiations.

##### 836.606-70 Architect-engineer firms' proposal.

(a) When the contract price is estimated to be \$50,000 or more, the contracting officer shall use VA Form 6298, Architect-Engineer Fee Proposal, to obtain the proposal and supporting cost data from the proposed contractor and subcontractor in the negotiation of an A-E contract for design services.

(b) In obtaining A-E services for research study, seismic study, master planning study, construction management and other related services contracts, the contracting officer shall use VA Form 6298, supplemented or modified as needed for the particular project type.

[84 FR 9973, Mar. 19, 2019]

##### 836.606-71 Application of 6 percent architect-engineer fee limitation.

(a) The production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction. Other A-E fees are not included in this 6 percent. Such fees are delineated in reference (c) below.

(b) The 6 percent limit also applies to contract modifications, including modifications involving:

(1) *Work not initially included in the contract.* Apply the 6 percent limit to the revised total estimated construction cost.

(2) *Redesign.* Apply the 6 percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the 6 percent statutory limitation.

(c) The 6 percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to—

(i) Determination of program requirements, including schematic or preliminary plans and estimates;

(ii) Determination of feasibility of proposed project;

(iii) Preparation of measured drawings of existing facility;

(iv) Subsurface investigation;

(v) Structural, electrical, and mechanical investigation of existing facility;

(vi) Surveys: topographic, boundary, utilities, etc.;

(vii) Environmental services;

(viii) Geo-Tech studies; and

(ix) Feasibility studies.

(2) Special consultant services that are not normally available in organizations of architects or engineers and that are not specifically applied to the actual preparation of working drawings or specifications of the project for which the service are required.

(3) Other—

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media;

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications;

(iii) Supervision or inspection of construction, review of shop drawings or

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samples, and other services performed during the construction phase;

(iv) All other services that are not an integral part of the production and delivery of plans, designs, and specifications; and

(v) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

[84 FR 9973, Mar. 19, 2019]

### **Subpart 836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements**

SOURCE: 84 FR 9973, Mar. 19, 2019, unless otherwise noted.

#### **836.7000 Scope of subpart.**

This subpart sets forth requirements for the use of VA unique forms, as prescribed in this part, for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. See part 853.

#### **836.7001 Unique construction and architect-engineer services forms.**

Contracting officers may use the following forms, as prescribed in this subpart, for construction, architect-engineer services or dismantling, demolition, or removal of improvements contracts as set forth below and in the referenced prescriptions:

(a) VA Form 6298, Architect-Engineer Fee Proposal (see 853.236–70). VA Form 6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606–70.

(b) VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services) (see 853.236–71). VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services), may be used for ordering supplies or services, including task orders for Construction or A–E services, to include dismantling, demolition, or removal of improvements.

(c) VA Form 10101, Contractor Production Report (see 853.236–72). Contractors may use VA Form 10101, Contractor Production Report or a contractor generated form containing the

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same type of information contained in the form, as required by 836.573 which prescribes the clause at 852.236–79, Contractor Production Report.

## **PART 837—SERVICE CONTRACTING**

### **Subpart 837.1—Service Contracts—General**

Sec.

837.110–70 VA solicitation provisions and contract clauses.

#### **Subpart 837.2 [Reserved]**

### **Subpart 837.4—Nonpersonal Health Care Services**

837.403–70 VA contract clauses.

### **Subpart 837.70—Mortuary Services**

837.7000 Scope.

837.7001 Solicitation provisions and contract clauses.

AUTHORITY: Pub. L. 101–647; 20 U.S.C. 7181–7183; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### **Subpart 837.1—Service Contracts—General**

#### **837.110–70 VA solicitation provisions and contract clauses.**

(a) Contracting officers shall include the clause at 852.237–74, Non-Discrimination in Service Delivery, in all solicitations and contracts covering services provided to eligible beneficiaries.

(b) The contracting officer shall insert the clause at 852.237–75, Key Personnel, in solicitations and contracts when the contracting officer will require the contractor to designate contractor key personnel.

[84 FR 46453, Sept. 4, 2019]

#### **Subpart 837.2 [Reserved]**

### **Subpart 837.4—Nonpersonal Health Care Services**

#### **837.403–70 VA contract clauses.**

(a) The contracting officer shall insert the clause at 852.237–70, Indemnification and Medical Liability Insurance, in lieu of FAR clause 52.237–7, in

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solicitations and contracts for nonpersonal health care services, including contracts awarded under the authority of 38 U.S.C. 7409, 38 U.S.C. 8151–8153, and part 873. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in FAR part 13 and part 813.

(b) The contracting officer shall insert the clause at 852.237–71, Non-smoking Policy for Children’s Services, in solicitations, contracts, and orders that involve health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Nonsmoking Policy for Children’s Services (20 U.S.C. 6081–6084).

(c) The contracting officer shall insert the clause at 852.237–72, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal land or in a federally operated (or contracted) facility and involve the professions/activities performed by persons specified in the Crime Control Act of 1990 (42 U.S.C. 13031) including, but not limited to, teachers, social workers, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(d) The contracting officer shall insert the clause at 852.237–73, Crime Control Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (42 U.S.C. 13041).

[84 FR 46453, Sept. 4, 2019]

### Subpart 837.70—Mortuary Services

#### 837.7000 Scope.

This subpart applies to mortuary (funeral and burial) services for beneficiaries of VA as provided in 38 U.S.C. 2302, 2303, and 2308 when it is deter-

mined that a contract would be the most efficient and effective method. Contract payment terms for use of the purchase card as a method of payment

[84 FR 46454, Sept. 4, 2019]

#### 837.7001 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the basic or the alternate of the provision at 852.237–76, Award to Single Offeror, in solicitations and contracts for mortuary services as follows:

(1) Insert the provision in all sealed bid solicitations for mortuary services; and

(2) Insert the basic provision with its alternate I in all negotiated solicitations for mortuary services.

(b) The contracting officer shall insert in addition to FAR 52.216–21, Requirements, the following VA clauses in all mortuary service solicitations and contracts:

(1) 852.237–77, Area of Performance.

(2) 852.237–78, Performance and Delivery.

(3) 852.237–79, Subcontracting.

(4) 852.237–80, Health Department and Transport Permits.

(c) See also 816.506–70 and 849.504–70 for additional clauses for use in contracts for mortuary services.

[84 FR 46454, Sept. 4, 2019]

## PART 839—ACQUISITION OF INFORMATION TECHNOLOGY [RESERVED]

## PART 841—ACQUISITION OF UTILITY SERVICES

### Subpart 841.1—General

Sec.

841.100 Scope of part.

841.102 Applicability.

### Subpart 841.2 [Reserved]

### Subpart 841.5—Solicitation Provision and Contract Clauses

841.501 Solicitation provision and contract clauses.

841.501–70 Disputes—Utility contracts.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

## **841.102**

### **Subpart 841.1—General**

#### **841.102 Applicability.**

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers when a delegation of authority from GSA for those services is requested and obtained.

(b)(4) The acquisition of energy, such as electricity, and natural or manufactured gas, when purchased as a commodity is considered to be acquisitions of supplies rather than utility services as described in FAR part 41.

[85 FR 60077, Sept. 24, 2020]

### **Subpart 841.2 [Reserved]**

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### **Subpart 841.5—Solicitation Provision and Contract Clauses**

SOURCE: 85 FR 60077, Sept. 24, 2020, unless otherwise noted.

#### **841.501 Solicitation provision and contract clauses.**

##### **841.501–70 Disputes—Utility contracts.**

The contracting officer shall insert the clause at 852.241–70, Disputes—Utility Contracts, in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

[85 FR 67463, Oct. 23, 2020]



## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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842.000 Scope of part.  
842.070 Definitions.

#### Subpart 842.1 [Reserved]

#### Subpart 842.2—Contract Administration Services

842.270 Contracting Officer's Representatives' role in contract administration.  
842.271 Administrative Contracting Officer's role in contract administration and delegated functions.  
842.272 Contract clause for Government construction contract administration.

#### Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

#### Subpart 842.8 [Reserved]

#### Subpart 842.12—Novation and Change-of-Name Agreements

842.1202 Responsibility for executing agreements.

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

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### 842.000 Scope of part.

This part prescribes policies and procedures for contract administration and audit services for all Department of Veterans Affairs (VA) contracting activities.

[85 FR 60077, Sept. 24, 2020]

#### 842.070 Definitions.

As used in this part—

*Contract administration* means Government actions taken after contract award to obtain compliance with such contract requirements as timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include, but are not limited to, technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer. It may include additional tasks requested of designated contract ad-

ministration offices within VA in support of pre-award activities for solicitations issued by or awarded by other contracting activities through Inter-agency Acquisitions.

*Administrative Contracting Officer Letter of Delegation* means a delegation of functions as set forth in FAR 42.202, 42.302 and 842.271, Administrative Contracting Officer's role in contract administration and delegated functions, that is issued by a contracting officer to delegate certain contract administration or specialized support services.

[85 FR 60077, Sept. 24, 2020]

#### Subpart 842.1 [Reserved]-

#### Subpart 842.2—Contract Administration Services

SOURCE: 85 FR 60077, Sept. 24, 2020 and 85 FR 67463, Oct. 23, 2020, unless otherwise noted.

#### 842.270 Contracting Officer's Representatives' role in contract administration.

(a) A contracting officer may designate a qualified person to be the Contracting Officer's Representative (COR) for the purpose of performing certain technical functions in administering a contract.

(b) The COR acts solely as a technical representative of the contracting officer and is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract.

(c) A COR designation must be made in writing by the contracting officer. The designation shall identify the responsibilities and limitations of the COR. A copy of the designation must be furnished to the contractor and the Administrative Contracting Officer (ACO), if separately assigned.

#### 842.271 Administrative Contracting Officer's role in contract administration and delegated functions.

(a) Contracting officers are authorized to delegate certain contract administration or specialized support

services in accordance with FAR 42.202 and 42.302 to cognizant VA administrative contracting officers.

(b) The Administrative Contracting Officer's authority is limited to the actions detailed in the delegation.

(c) These delegations of authority shall be set forth in a written Administrative Contracting Officer (ACO) Letter of Delegation issued by the contracting officer to the accepting contract administration office and designated administrative contracting officer. The ACO Letter of Delegation shall contain the information required in FAR 42.202(a) through (c) and identify the responsibilities and limitations of the ACO. A copy of the delegation will be furnished to the contractor and the ACO.

(d) The contracting officer shall insert the clause at 852.242–71, Administrative Contracting Officer, in solicitations and contracts expected to exceed the micro-purchase threshold.

**842.272 Contract clause for Government construction contract administration.**

The contracting officer shall insert the clause at 852.242–70, Government Construction Contract Administration, in solicitations and contracts for construction expected to exceed the micro-purchase threshold, when contract administration is delegated.

**Subpart 842.7—Indirect Cost Rates**

**842.705 Final indirect cost rates.**

Except when the quick-closeout procedures described in FAR 42.708 are used, contracting officers shall request contract audits on proposed final indirect cost rates and billing rates for use in cost reimbursement and fixed-price incentive contracts as prescribed in FAR subpart 42.7.

[85 FR 60077, Sept. 24, 2020]

**Subpart 842.8 [Reserved]**

**Subpart 842.12—Novation and Change-of-Name Agreements**

**842.1202 Responsibility for executing agreements.**

To avoid duplication of effort on the part of VA contracting offices in preparing and executing agreements to recognize a change of name or successor in interest involving multiple contracts issued by VA activities, only one agreement will be prepared and executed between the Government and the parties (transferor and transferee) and will be processed as forth in FAR 42.1203. The Office of Acquisition and Logistics, Risk Management and Compliance Service will, in each case, designate a cognizant HCA responsible for assigning a contracting officer. The designated contracting officer shall be responsible for taking all necessary and appropriate actions with respect to either recognizing or not recognizing a successor in interest or recognizing a change of name agreement and processing and executing the agreements as set forth in VA procedures.

[85 FR 60078, Sept. 24, 2020]

**PART 843—CONTRACT MODIFICATIONS**

**Subpart 843.2—Change Orders**

Sec.

843.205 Contract clauses.

843.205–70 Contract changes—supplement.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

SOURCE: 84 FR 45682, Aug. 30, 2019, unless otherwise noted.

**Subpart 843.2—Change Orders**

**843.205 Contract clauses.**

As authorized in the introductory text of clauses FAR 52.243–1, Changes—Fixed-Price; FAR 52.243–2, Changes—Cost-Reimbursement; and FAR 52.243–4, Changes, and in the prescription at FAR 43.205(c) for FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, the contracting officer may vary the period within which a contractor must assert its right to an equitable adjustment but the extended

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period shall not exceed 60 calendar days.

### **843.205–70 Contract changes—supplement.**

The contracting officer shall insert the clause at 852.243–70, Construction Contract Changes—Supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

## **PART 844—SUBCONTRACTING POLICIES AND PROCEDURES**

### **Subpart 844.2—Consent to Subcontracts**

Sec.

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.

SOURCE: 83 FR 47099, Sept. 18, 2018, unless otherwise noted.

### **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 compli-

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ance 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**

### **Subpart 845.4—Title to Government Property**

Sec.

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.

SOURCE: 83 FR 47099, Sept. 18, 2018, unless otherwise noted.

### **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.

## PART 846—QUALITY ASSURANCE

### Subpart 846.1—General

Sec.

846.101 Definition.

### Subpart 846.3—Contract Clauses

846.370 Clauses for supplies, equipment or perishable goods.

846.370–1 Rejected goods.

846.370–2 Frozen processed foods.

846.370–3 Noncompliance with packaging, packing, and/or marking requirements.

846.370–4 Purchase of shellfish.

### Subpart 846.4—Government Contract Quality Assurance

846.408–70 Inspection of subsistence.

846.470 Use of commercial organizations for inspections and grading services.

846.471 Food service equipment.

### Subpart 846.7—Warranties

846.702–70 Guarantee period services and specifications.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 846.1—General

#### 846.101 Definition.

As used in this part—

*Rejected goods* means supplies and/or equipment failing to meet contractual terms and conditions and/or generally accepted quality standards that may be

returned by the Government at the contractor's risk and expense.

[83 FR 48259, Sept. 24, 2018]

### Subpart 846.3—Contract Clauses

SOURCE: 83 FR 48259, Sept. 24, 2018, unless otherwise noted.

#### 846.370 Clauses for supplies, equipment or perishable goods.

##### 846.370–1 Rejected goods.

The contracting officer shall insert the clause at 852.246–71, Rejected Goods, in solicitations and contracts for the acquisition of supplies, equipment or perishable goods. Perishable goods include such items as packing house and dairy products, bread and bakery products, fresh and frozen fruits, and vegetables.

##### 846.370–2 Frozen processed foods.

(a) The contracting officer shall insert the clause at 852.246–72, Frozen Processed Foods, in solicitations and contracts for frozen processed foods.

(b) The following frozen processed food products must contain a label that complies with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), which requires all ingredients be listed in accordance with their predominance order:

(1) Frozen processed food products that contain meat, poultry, or a significant proportion of eggs.

(2) Frozen processed food products that contain fish or fish products.

(3) Frozen bakery products.

(c) All procured frozen processed food products that contain meat, poultry or a significant proportion of eggs must meet the following requirements:

(1) The products must be processed or prepared in plants operating under the supervision of the Department of Agriculture (USDA).

(2) The product must be inspected and approved in accordance with USDA regulations governing meat, poultry, or egg inspection. A label or seal that indicates compliance with USDA regulations, affixed to the container, will be accepted as evidence of compliance.

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(d) All procured frozen processed food products that contain fish or fish products must meet the following requirements:

(1) The product must be processed or prepared in plants or vessels, sanitarily inspected, approved, and certified by the United States Department of Commerce (USDC). The products are listed in USDC's publication "USDC Approved Establishments" under U.S. Establishments Approved for Sanitation and for Producing USDC Inspected Fishery Products. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal indicating compliance with USDC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the conditions in paragraph (d)(1) of this section were not met (*e.g.*, no seal), the shipment may be lot-inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(e) Producers of frozen bakery products that ship products in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, the product must be verified as shipped interstate or that the producer ships products to other purchasers interstate.

### **846.370-3 Noncompliance with packaging, packing, and/or marking requirements.**

The contracting officer shall insert the clause at 852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with FAR 12.302(c).

### **846.370-4 Purchase of shellfish.**

(a) The U.S. Food and Drug Administration (FDA) at <http://www.fda.gov>

provides quality assurance seafood safety guidelines.

(b) The contracting officer shall insert the clause at 852.246-76, Purchase of Shellfish, in solicitations and contracts for shellfish.

## **Subpart 846.4—Government Contract Quality Assurance**

SOURCE: 83 FR 48260, Sept. 24, 2018, unless otherwise noted.

### **846.408-70 Inspection of subsistence.**

(a) The contracting officer shall indicate the time and place of inspection in the solicitation.

(b) The contracting officer shall also provide in the solicitation that the contractor is responsible for all of the following:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.

(3) Assuring that the certificate, or copy, accompanies the shipment.

(4) Furnishing samples for inspection at the contractor's expense.

(5) Indicating the address where inspection will occur.

(c) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

### **846.470 Use of commercial organizations for inspections and grading services.**

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following exist:

(a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.

(b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(c) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(d) The services may be performed without direct Government supervision.

**846.471 Food service equipment.**

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center sources must meet requirements set forth by NSF International (NSF) at <http://www.nsf.org>.

(b) The contracting officer will ensure that the following language is placed in the solicitation to assert that the equipment meets NSF standards:

The Government will accept an affixed NSF label and/or documentation of the NSF Certification from the contractor as evidence that the subject equipment meets NSF Sanitation standards.

**Subpart 846.7—Warranties**

**846.702–70 Guarantee period services and specifications.**

(a) Guarantee period of services are associated with preserving and protecting a specified piece of contractor-installed equipment that is guaranteed under a construction contract. Specifications for certain high-dollar or traditionally troublesome equipment are designed to allow for the original installer of the equipment to service the equipment throughout the guaranty period.

(b) Guarantee period services are not the same as the 1-year general construction guaranty clause found at FAR clause 52.246–21, Warranty of Construction.

(c) The contracting officer may determine, when in the best interest of VA that guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and ensure that the equipment performs as guaranteed.

(d) When the determination is made under paragraph (c) of this section, the contracting officer shall include the guarantee period of services as a separately priced contract line item number (CLIN) in solicitations and contracts.

(e) The contracting officer shall insert the clause at 852.246–75, Warranty of Construction—Guarantee Period

Services, in solicitations and contracts for construction that include the FAR clause 52.246–21, Warranty of Construction, and that also include guarantee period services.

(f) In accordance with the approved VA specifications, the following types of equipment contain the guarantee period services specifications. The following represents a sampling of these specifications.

(1) *Division 14—Conveying Equipment.*

(i) Electric Dumbwaiters Geared Traction and Winding Drum (VA 14 12 11).

(ii) Electric Traction Elevators (VA 14 21 00).

(iii) Traction Cartlift (VA 14 21 11).

(iv) Hydraulic Elevators (VA 14 24 00).

(v) Hydraulic Cartlift (VA 14 24 11).

(2) *Division 27—Communications.* (i) Public Address and Mass Notification Systems (VA 27 51 16).

(ii) Intercommunication and Program Systems (VA 27 51 23).

(g) The construction contractor shall require the original installer of the equipment, which is normally a subcontractor, to provide the guarantee period services.

[83 FR 48260, Sept. 24, 2018]

**PART 847—TRANSPORTATION**

**Subpart 847.2—Contracts for Transportation or for Transportation-Related Services**

Sec.

847.207 Solicitation provisions, contract clauses, and special requirements.

847.207–8 Government responsibilities.

847.207–70 VA solicitation provisions, contract clauses, and special requirements.

**Subpart 847.3—Transportation in Supply Contracts**

847.302 Place of delivery—f.o.b. point.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305–10 Packing, marking, and consignment instructions.

847.305–70 Potential destinations known but quantities unknown.

847.305–71 VA contract clauses.

847.306 Transportation factors in the evaluation of offers.

847.306–70 Records of claims.

AUTHORITY: 38 U.S.C. 513; 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 CFR part 102–117; and 48 CFR 1.301–1.304.

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SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

SOURCE: 83 FR 48260, Sept. 24, 2018, unless otherwise noted.

#### 847.207 Solicitation provisions, contract clauses, and special requirements.

##### 847.207-8 Government responsibilities.

Transportation payments are audited by the Traffic Manager, to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR part 102-118.

#### 847.207-70 VA solicitation provisions, contract clauses, and special requirements.

(a) *Insurance under patient transportation contracts.* The contracting officer shall ensure that all the proper certificates of insurance are submitted to perform on the contract, as outlined in the solicitation, and subsequently included in the contract file. In accordance with 828.306, the contracting officer shall insert the provision at 852.228-71, Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service. When contracting for these services, consider using requirements language such as the following:

(1) Written proof of insurance coverage as required and outlined in the solicitation is required prior to award of any contract. Coverage must be maintained continually through the life of the contract.

(2) Within 10 days of notification of acceptance and pending award of contract, the contractor shall furnish to the contracting officer a certificate of insurance which shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day advance written notice of can-

cellation or change is furnished to the contracting officer.

(3) Within 10 days of notification of acceptance and pending award of contract, and prior to award of a contract, the contractor shall furnish to the contracting officer a copy of the contractor's current and valid Worker's Compensation certificate.

(b) *Contractor personnel.* The contracting officer shall ensure that contractor personnel have the appropriate level of training, experience, licensure, and pertinent qualifications to ensure patient safety. When contracting for these services, consider using requirements language such as the following:

(1) All contractor personnel performing contract services shall meet the qualifications as specified in the contract, as well as any qualifications required by Federal, State, County, and local Government entities from the place in which they operate. Contractor personnel shall meet these qualifications at all times while performing contract services.

(2) During the contract period of performance, if the contractor proposes to add-on, or replace personnel to perform contract services, the contractor shall submit required evidence of training, certifications, licensing, background, and security clearances, and any other applicable qualifications to the designated contracting officer's representative (COR). At no time shall the contractor utilize add-on or replacement personnel to perform contract services who do not meet the qualifications under the terms and conditions of the contract.

(3) Records of contractor personnel qualifications and eligibility to perform on the contract must be current and maintained throughout the life of the contract, and be made available for inspection upon request. The contractor shall forward to the contracting officer, on an annual basis, a list of contractor employees listing the employees name, position(s), and licenses and/or certifications and their current certification number. This annual statement of driver competency must include any advanced certifications, such as Advanced Cardiac Life

Support or specialized training to assist and secure patients by stretcher or wheelchair, as applicable.

(4) Within seven (7) days after receipt of award notification, the contractor shall provide evidence of required training, certifications, licensing and any other qualifications of any personnel who will be performing services under the contract. The initial documentation shall be provided to the contracting officer and COR.

(c) Contracts must include requirements to report vehicle accidents and incidents to the contracting officer with a formal accident report.

(d) Contracts for ambulance services must require that the contractor meet the current specifications of Federal Specification KKK-A-1822E, “Star of Life Ambulance” standard.

(e) Contracts must include requirements to ensure patient safety is maintained through the consistent practice of securing patient care equipment, other cargo, and vehicles, and ensure that security of patients in vehicles is established and observed when transportation needs are either primary or secondary in the actual performance of the contract. When contracting for these services, consider using requirements language to ensure that patient transportation meets industry standards for transporting patients based on the patient’s condition/needs (*e.g.*, wheelchair, ambulatory, on stretcher, etc.).

### Subpart 847.3—Transportation in Supply Contracts

SOURCE: 83 FR 48261, Sept. 24, 2018, unless otherwise noted.

#### 847.302 Place of delivery—f.o.b. point.

The contracting officer shall insert clause 852.247–71, Delivery Location, or a clause substantially the same as the clause at 852.247–71, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (*e.g.*, quantities to be delivered to each location, etc.).

#### 847.305 Solicitation provisions, contract clauses, and transportation factors.

##### 847.305–10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert clause 852.247–72, Marking Deliverables, or a clause substantially the same as 852.247–72 in solicitations and contracts if special marking on deliverables are required.

(b) The contracting officer shall insert the clause at 852.247–73, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

##### 847.305–70 Potential destinations known but quantities unknown.

When the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an f.o.b. origin basis, the evaluation of bids must follow specific procedures. In these instances, the contracting officer shall insert clause 852.247–70, Determining Transportation Costs for Evaluation of Offers, or a clause substantially the same as clause 852.247–70. By inserting this clause, each bid is placed on an equal basis, even though specific quantities required by each facility cannot be predetermined. The contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload.

#### 847.305–71 VA contract clauses.

(a) The contracting officer shall insert clause 852.247–74, Advance Notice of Shipment, or a clause substantially the same as 852.247–74, in solicitations and contracts when the f.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert clause 852.247–75, Bills of Lading, or a clause substantially the same as



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clause at 852.247–75, in f.o.b. origin solicitations and contracts.

### **847.306 Transportation factors in the evaluation of offers.**

#### **847.306–70 Records of claims.**

When contracting for transportation, and consistent with FAR 15.304, contracting officers should consider using offerors' record of claims involving loss or damage as an evaluation factor or subfactor.

## **PART 849—TERMINATION OF CONTRACTS**

### **Subpart 849.1 [Reserved]**

#### **Subpart 849.5—Contract Termination Clauses**

849.504 Termination of fixed-price contracts for default.

849.504–70 Termination of mortuary services.

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

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### **Subpart 849.1 [Reserved]**

#### **Subpart 849.5—Contract Termination Clauses**

849.504 Termination of fixed-price contracts for default.

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).

#### **Subpart 849.5—Contract Termination Clauses**

SOURCE: 85 FR 36349, June 16, 2020, unless otherwise noted.

849.504 Termination of fixed-price contracts for default.

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).

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 852.1—Instructions for Using Provisions and Clauses

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852.101 Using part 852.

852.102 Incorporating provisions and clauses.

#### Subpart 852.2—Text of Provisions and Clauses

852.203-70 Commercial advertising.

852.203-71 [Reserved]

852.204-70 Personal identity verification of contractor personnel.

852.207-70 Report of employment under commercial activities.

852.209-70 Organizational conflicts of interest.

852.211-70 Equipment operation and maintenance manuals.

852.211-71 [Reserved]

852.211-72 Technical industry standards.

852.211-73—852.211-75 [Reserved]

852.212-70 Provisions and Clauses Applicable to VA Acquisition of Commercial Items.

852.212-71 Gray Market Items.

852.214-70 [Reserved]

852.214-71 Restrictions on alternate item(s).

852.214-72 Alternate item(s).

852.214-73 Alternate packaging and packing.

852.214-74 Marking of bid samples.

852.215-70 Service-disabled veteran-owned and veteran-owned small business evaluation factors.

852.215-71 Evaluation factor commitments.

852.215-72 Notice of intent to re-solicit.

852.216-70 [Reserved]

852.216-71 Economic price adjustment of contract price(s) based on a price index.

852.216-72 Proportional economic price adjustment of contract price(s) based on a price index.

852.216-73 Economic price adjustment—state nursing home care for veterans.

852.216-74 Economic price adjustment—medicaid labor rates.

852.216-75 Economic price adjustment clause—fuel surcharge.

852.216-76 Requirements—supplement for mortuary services.

852.217-70 Contract Action Definization.

852.219-9 VA Small business subcontracting plan minimum requirements.

852.219-10 VA Notice of total service-disabled veteran-owned small business set-aside.

852.219-11 VA notice of total veteran-owned small business set-aside.

852.219-71 VA mentor-protégé program.

852.219-72 Evaluation factor for participation in the VA mentor-protégé program.

852.222-70 Contract work-hours and safety standards—nursing home care for veterans.

852.223-70 Instructions to offerors—Sustainable Acquisition Plan.

852.223-71 Safety and health.

852.228-70 Bond premium adjustment.

852.228-71 Indemnification and insurance.

852.228-72 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonds.

852.228-73 Indemnification of contractor—hazardous research projects.

852.229-70—852.229-71 [Reserved]

852.232-70 Payments Under Fixed-Price Construction Contracts (Without NAS-CPM).

852.232-71 Payments Under Fixed-Price Construction Contracts (Including NAS-CPM).

852.232-72 Electronic submission of payment requests.

852.233-70 Protest content/alternative dispute resolution.

852.233-71 Alternate protest procedure.

852.236-70 [Reserved]

852.236-71 Specifications and drawings for construction.

852.236-72 Performance of work by the contractor.

852.236-73—852.236-78 [Reserved]

852.236-79 Contractor production report.

852.236-80 Subcontracts and work coordination.

852.236-81—852.236-89 [Reserved]

852.236-90 Restriction on submission and use of equal products.

852.236-91 [Reserved]

852.236-92 Notice to bidders—additive or deductive bid line items.

852.237-70 Indemnification and medical liability insurance.

852.237-71 Nonsmoking policy for children's services.

852.237-72 Crime Control Act—reporting of child abuse.

852.237-73 Crime Control Act—requirement for background checks.

852.237-74 Non-Discrimination in service delivery.

852.237-75 Key personnel.

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852.237-78 Performance and delivery.

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852.237-80 Health department and transport permits.

852.241-70 Disputes—Utility contracts.

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- 852.242-70 Government construction contract administration.
- 852.243-70 Construction contract changes—supplement
- 852.246-70 [Reserved]
- 852.246-71 Rejected goods.
- 852.246-72 Frozen processed foods.
- 852.246-73 Noncompliance with packaging, packing and/or marking requirements.
- 852.246-74 [Reserved]
- 852.246-75 Warranties for construction—guarantee period services.
- 852.246-76 Purchase of shellfish.
- 852.247-70 Determining transportation costs for evaluation of offers.
- 852.247-71 Delivery location.
- 852.247-72 Marking deliverables.
- 852.247-73 Packing for domestic shipment.
- 852.247-74 Advance notice of shipment.
- 852.247-75 Bills of lading.
- 852.249-70 Termination for default—supplement for mortuary services.
- 852.252-70 Solicitation provisions or clauses incorporated by reference.
- 852.270-1 Representatives of contracting officers.
- 852.271-70—852.271-71 [Reserved]
- 852.271-72 Time spent by counselee in counseling process.
- 852.271-73 Use and publication of counseling results.
- 852.271-74 Inspection.
- 852.271-75 Extension of contract period.
- 852.273-70 Late offers.
- 852.273-71 Alternative negotiation techniques.
- 852.273-72 Alternative evaluation.
- 852.273-73 Evaluation—health-care resources.
- 852.273-74 Award without exchanges.

AUTHORITY: 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.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

### Subpart 852.1—Instructions for Using Provisions and Clauses

#### 852.101 Using part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provisions and clause numbering are as prescribed in FAR 52.101 (e.g., supplementary construction clauses under part 836 are numbered 852.236-71, 852.236-72, etc.).

#### 852.102 Incorporating provisions and clauses.

(a) As authorized by FAR 52.102(c), any 48 CFR chapter 8 (VAAR) provision

or clause may be incorporated in a quotation, solicitation, or contract by reference, provided the contracting officer complies with the requirements stated in FAR 52.102(c)(1), (c)(2), and (c)(3). To ensure compliance with FAR 52.102(c)(1) and (c)(2), contracting officers shall insert the provision found at 852.252-70, Solicitation provisions or clauses incorporated by reference, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

(b) For any FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert the title of the provision or clause and the paragraph that requires completion in full text in the quotation, solicitation, or contract. The balance of the provision or clause may be incorporated by reference.

(c) When one or more FAR or 48 CFR chapter 8 (VAAR) provisions, or portions thereof, are incorporated in a quotation or solicitation by reference, the contracting officer shall insert in the quotation or solicitation the provision found at FAR 52.252-1, Solicitation Provisions Incorporated by Reference.

(d) When one or more FAR or 48 CFR chapter 8 (VAAR) clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the quotation, solicitation, or contract the clause found at FAR 52.252-2, Clauses Incorporated by Reference.

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <http://www.acquisition.gov/comp/far/index.html>.

(f) If one or more 48 CFR chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall

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insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <http://www1.va.gov/oamm/acquisitions/ars/policyreg/vaar/index.htm>.

**Subpart 852.2—Text of Provisions  
and Clauses**

**852.203-70 Commercial advertising.**

As prescribed in 803.570-2, insert the following clause:

COMMERCIAL ADVERTISING (MAY 2018)

The Contractor shall not make reference in its commercial advertising to Department of Veterans Affairs contracts in a manner that states or implies the Department of Veterans Affairs approves or endorses the Contractor's products or services or considers the Contractor's products or services superior to other products or services.

(End of clause)

[83 FR 16209, Apr. 16, 2018]

**852.203-71 [Reserved]**

**852.204-70 Personal identity  
verification of contractor per-  
sonnel.**

As prescribed in 804.1303, insert the following clause:

PERSONAL IDENTITY VERIFICATION OF  
CONTRACTOR PERSONNEL (MAY 2020)

(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)

[85 FR 36349, June 16, 2020]

**852.207-70 Report of employment  
under commercial activities.**

As prescribed in 807.304-77 and 873.110, the following clause will be included in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 that may result in conversion from in-house to contract performance of work:

**48 CFR Ch. 8 (10-1-21 Edition)**

REPORT OF EMPLOYMENT UNDER COMMERCIAL  
ACTIVITIES (JAN 2008)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal personnel the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) *Adversely affected Federal personnel* means:

(i) Permanent Federal personnel who are assigned to the government commercial activity, or

(ii) Federal personnel who are identified for release from their competitive levels or separated as a result of the contract.

(2) *Employment openings* means position vacancies created by this contract that the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award. The term includes positions within a 50-mile radius of the commercial activity that indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) *Contract start date* means the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 calendar days after the contract start date, no person other than adversely affected Federal personnel on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal personnel identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal personnel on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than 5 working days after contract award, the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits, and

(ii) Sufficient job application forms for adversely affected Federal personnel.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal personnel offered an employment opening;

(ii) The date the offer was made;

(iii) A brief description of the position;

(iv) The date of acceptance of the offer and the effective date of employment;

(v) The date of rejection of the offer, if applicable, and the salary and benefits contained in the rejected offer; and

(vi) The names of any adversely affected Federal personnel who applied but were not

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offered employment and the reason(s) for withholding an offer.

(3) For the first 90 calendar days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within 5 working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 calendar days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal personnel exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected Federal personnel to other Federal positions.

(3) For a period of up to 90 calendar days after the contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal personnel reflecting personnel who were recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualifications determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal personnel for any employment openings. However, adversely affected Federal personnel who held jobs in the Government commercial activity that directly correspond to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal personnel for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relating to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities, or persons with disabilities.

(h) *Penalty for noncompliance.* Failure of the contractor to comply with any provision of the clause may be grounds for termination for default.

(End of clause)

### 852.209-70 Organizational conflicts of interest.

As prescribed in 809.507-1(b), insert the following provision:

#### ORGANIZATIONAL CONFLICTS OF INTEREST (OCT 2020)

(a) It is in the best interest of the Government to avoid situations which might create

an organizational conflict of interest or where the Offeror's performance of work under the contract may provide the Contractor with an unfair competitive advantage. The term "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage.

(b) The Offeror shall provide a statement with its offer which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The Offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The Offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

(c) Based on this information and any other information solicited or obtained by the Contracting Officer, the Contracting Officer may determine that an organizational conflict of interest exists which would warrant disqualifying the Contractor for award of the contract unless the organizational conflict of interest can be mitigated to the Contracting Officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the Contracting Officer finds that it is in the best interest of the United States to award the contract, the Contracting Officer shall request a waiver in accordance with FAR 9.503.

(d) Nondisclosure or misrepresentation of actual or potential organizational conflicts of interest at the time of the offer or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Provision)

[85 FR 60078, Sept. 24, 2020]

### 852.211-70 Equipment operation and maintenance manuals.

As prescribed in 811.107-70, insert the following clause:

**852.211-71****EQUIPMENT OPERATION AND MAINTENANCE  
MANUALS (NOV 2018)**

The Contractor shall follow standard commercial practices to furnish manual(s), handbook(s) or brochure(s) containing operation, installation, and maintenance instructions, including pictures or illustrations, schematics, and complete repair/test guides, as necessary, for technical medical equipment and devices, and/or other technical and mechanical equipment provided per CLIN(s) #\_\_\_\_\_. [Contracting Officer insert CLIN information]. The manuals, handbooks or brochures shall be provided in hard copy, soft copy or with electronic access instructions, consistent with standard industry practices for the equipment or device. Where applicable, the manuals, handbooks or brochures will include electrical data and connection diagrams for all utilities. The documentation shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of clause)

[83 FR 49307, Oct. 1, 2018]

**852.211-71 [Reserved]****852.211-72 Technical industry standards.**

As prescribed in 811.204-70, insert the following clause:

**TECHNICAL INDUSTRY STANDARDS (NOV 2018)**

(a) The Contractor shall conform to the standards established by: \_\_\_\_\_ [Contracting Officer: Insert name of organization establishing the requirement, reference title, cite and date, e.g., United States Department of Agriculture (USDA), Institutional Meat Purchase Specifications (IMPS), Series 100, Beef products, Jan 2010] as to [Contracting Officer: Insert item and CLIN, e.g., CLIN 0005 Ground Beef].

(b) The Contractor shall submit proof of conformance to the standard. This proof may be a label or seal affixed to the equipment or supplies, warranting that the item(s) have been tested in accordance with the standards and meet the contract requirement. Proof may also be furnished by the organization listed above certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(c) Offerors may obtain the standards cited in this provision by submitting a request, including the solicitation number, title and number of the publication to: [Organization] \_\_\_\_\_ [Mail or email address] \_\_\_\_\_.

(d) The offeror shall contact the Contracting Officer if response is not received within two weeks of the request.

**48 CFR Ch. 8 (10-1-21 Edition)**

(End of clause)

[83 FR 49307, Oct. 1, 2018]

**852.211-73—852.211-75 [Reserved]****852.212-70 Provisions and Clauses Applicable to VA Acquisition of Commercial Items.**

As prescribed in 812.301(f)(1), insert the following clause to indicate provisions and clauses applicable to this acquisition:

**PROVISIONS AND CLAUSES APPLICABLE TO VA  
ACQUISITION OF COMMERCIAL ITEMS (APR 2020)**

(a) The Contractor agrees to comply with any provision or clause that is incorporated herein by reference or full text to implement agency policy applicable to acquisition of commercial items or components. The following provisions and clauses that have been checked by the Contracting Officer are incorporated by reference or in full text. Text requiring fill-ins is shown under the clause or provision title:

\_\_\_\_\_ 852.203-70, Commercial Advertising.  
\_\_\_\_\_ 852.209-70, Organizational Conflicts of Interest.  
\_\_\_\_\_ 852.214-71, Restrictions on Alternate Item(s).  
\_\_\_\_\_ 852.214-72, Alternate Item(s).

Bids on [Contracting Officer will insert an alternate item that is considered acceptable] will be given equal consideration along with bids on [Contracting Officer will insert the required item and item number]\*\* and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of [Contracting Officer will insert the required item and item number].

(End of provision)

\_\_\_\_\_ 852.214-73, Alternate Packaging and Packing.  
\_\_\_\_\_ 852.214-74, Marking of Bid Samples.  
\_\_\_\_\_ 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.  
\_\_\_\_\_ 852.215-71, Evaluation Factor Commitments.  
\_\_\_\_\_ 852.216-71, Economic Price Adjustment of Contract Price(s) Based on a Price Index.  
\_\_\_\_\_ 852.216-72, Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.  
\_\_\_\_\_ 852.216-73, Economic Price Adjustment—State Nursing Home Care for Veterans.  
\_\_\_\_\_ 852.216-74, Economic Price Adjustment—Medicaid Labor Rates.  
\_\_\_\_\_ 852.216-75, Economic Price Adjustment—Fuel Surcharge.  
\_\_\_\_\_ 852.219-9, VA Small Business Subcontracting Plan Minimum Requirements.

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- 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
- 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside.
- 852.222-70, Contract Work Hours and Safety Standards Act—Nursing Home Care Contract Supplement.
- 852.228-70, Bond Premium Adjustment.
- 852.228-71, Indemnification and Insurance.
- 852.228-72, Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.
- 852.229-70, Sales and Use Taxes.
- 852.232-72, Electronic Submission of Payment Requests.
- 852.233-70, Protest Content/Alternative Dispute Resolution.
- 852.233-71, Alternate Protest Procedure.
- 852.237-7, Indemnification and Medical Liability Insurance.
- 852.237-70, Contractor Responsibilities.

The Contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of \_\_\_\_ [Insert name of State]. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the Contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting therefrom.

(End of clause)

- 852.246-70, Guarantee.

The Contractor guarantees the equipment against defective material, workmanship and performance for a period of \_\_\_\_ [Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.], said guarantee to run from date of acceptance of the equipment by the Government. The Contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the Contracting Officer if installation is outside of the continental

United States. Cost of installation of replacement material and parts shall be borne by the contractor. [The above clause will be modified to conform to standards of the industry involved.]

(End of clause)

- 852.246-71, Inspection or Alternate I.
- 852.246-72, Frozen Processed Foods.
- 852.246-73, Noncompliance with packaging, packing, and/or marking requirements.
- 852.270-1, Representatives of Contracting Officers.
- 852.270-2, Bread and Bakery Products—Quantities.
- 852.270-3, Purchase of Shellfish.
- 852.271-72, Time Spent by Counselee in Counseling Process.
- 852.271-73, Use and Publication of Counseling Results.
- 852.271-74, Inspection.
- 852.271-75, Extension of Contract Period.
- 852.273-70, Late Offers.
- 852.273-71, Alternative Negotiation Techniques.
- 852.273-72, Alternative Evaluation.
- 852.273-73, Evaluation—Health-Care Resources.
- 852.273-74, Award without Exchanges.

(b) When appropriate and in accordance with the prescriptions for the clause, the contracting officer may use the following clause in requests for quotations, solicitations, and contracts for the acquisition of commercial items if the contracting officer determines that the use is consistent with customary commercial practices:

- 852.211-70, Service Data Manuals or Alternate I.

(c) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the following clause at

- 852.271-70, Nondiscrimination in Services Provided to Beneficiaries.

(End of clause)

[85 FR 16906, Mar. 25, 2020]

### 852.212-71 Gray Market Items.

As prescribed in 812.301(f)(2), insert the following provision in solicitations and contracts for new medical equipment:

#### GRAY MARKET ITEMS (APR 2020)

(a) No gray market or remanufactured items will be acceptable. Gray market items are Original Equipment Manufacturers' (OEM) goods sold through unauthorized

## 852.214-70

channels in direct competition with authorized distributors. This procurement is for new OEM medical equipment only for VA medical facilities.

(b) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

[85 FR 16907, Mar. 25, 2020]

## 852.214-70 [Reserved]

### 852.214-71 Restrictions on alternate item(s).

As prescribed in 814.201-6(a)(1), insert the following provision:

RESTRICTIONS ON ALTERNATE ITEM(S) (MAY 2018)

Bids on [ ]\* will be considered only if acceptable bids on [ ]\*\* are not received or do not satisfy the total requirement.

\*Contracting Officer will insert an alternate item that is considered acceptable.

\*\*Contracting Officer will insert the required item and item number.

(End of provision)

[83 FR 16210, Apr. 16, 2018]

### 852.214-72 Alternate item(s).

As prescribed in 814.201-6(a)(2), insert the following provision:

ALTERNATE ITEM(S) (MAY 2018)

Bids on [ ]\* will be given equal consideration along with bids on [ ]\*\* and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of [ ]\*\*.

\*Contracting Officer will insert an alternate item that is considered acceptable.

\*\*Contracting Officer will insert the required item and item number.

(End of provision)

[83 FR 16210, Apr. 16, 2018]

### 852.214-73 Alternate packaging and packing.

As prescribed in 814.201-6(a)(3), insert the following provision:

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ALTERNATE PACKAGING AND PACKING (MAY 2018)

The bidders offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of provision)

[83 FR 16210, Apr. 16, 2018]

### 852.214-74 Marking of bid samples.

As prescribed in 814.201-6(b), insert the following provision:

MARKING OF BID SAMPLES (MAY 2018)

Any bid sample(s) furnished must be in the quantities specified in the solicitation. Cases or packages must be plainly marked 'Bid Sample(s)' with the complete lettering/numbering and description of the related bid item(s), the number of the Invitation for Bids, and the name of the bidder submitting the bid sample(s).

(End of provision)

[83 FR 16210, Apr. 16, 2018]

### 852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

As prescribed in 815.304-71(a), insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS (OCT 2019)

(a) In an effort to achieve socioeconomic small business goals, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) as subcontractors.

(b) Eligible service-disabled veteran-owned small businesses offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in the Vendor Information Pages (VIP) database.

(c) Non-Veteran offerors proposing to use SDVOSBs or VOSBs as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and



VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VIP database.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

[84 FR 46454, Sept. 4, 2019]

#### **852.215-71 Evaluation Factor Commitments.**

As prescribed in 815.304-71(b), insert the following clause:

EVALUATION FACTOR COMMITMENTS (OCT 2019)

(a) The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses (SDVOSBs) or veteran-owned small businesses (VOSBs) proposed as subcontractors in accordance with 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more SDVOSBs or VOSBs for subcontract work of the same or similar value.

(b) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

[84 FR 46454, Sept. 4, 2019]

#### **852.215-72 Notice of Intent to Re-Solicit.**

As prescribed at 815.370-5, use the following provision:

NOTICE OF INTENT TO RE-SOLICIT (OCT 2019)

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with 815.370-2.

(End of provision)

[84 FR 46454, Sept. 4, 2019]

#### **852.216-70 [Reserved]**

#### **852.216-71 Economic price adjustment of contract price(s) based on a price index.**

As prescribed in 816.203-4(e)(1), insert the following clause:

ECONOMIC PRICE ADJUSTMENT OF CONTRACT PRICE(S) BASED ON A PRICE INDEX (MAR 2018)

(a) To the extent that contract cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this contract for the base period and any option periods do not include any amount to protect against such contingent cost increases.

(b) The Base and Adjusting Indexes, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_,<sup>1</sup> as contained in \_\_\_\_\_,<sup>2</sup> as published by \_\_\_\_\_.<sup>3</sup> All adjustments authorized under this clause shall be made by using the Base Index and Adjusting Indexes, which are published \_\_\_\_\_.<sup>4</sup>

(1) The Base Index, for the purposes of price adjustment under this clause, shall be the most recent Index published prior to the date for receipt of offers, or the due date for receipt of best and final offers if discussions were held whichever is later. The Base Index shall remain constant for the entire term of the contract, including all option periods.

(2) The Adjusting Index shall be the most recent Index published prior to the date of contract adjustment, as specified in paragraph (d) of this clause.

(c) The percentage difference between the Base Index and the Adjusting Index, rounded to the nearest .01 percent (*e.g.*, 4.57%), will be used in calculating all adjustments to the

<sup>1</sup>The Contracting Officer shall conduct market research to determine a suitable Consumer Price Index or other independent broad-based index to use for the solicitation. For example, for medical services, an appropriate index may be the Consumer Price Index that tracks medical services.

<sup>2</sup>Specify where the Index can be found, such as in a solicitation for laboratory services, the Contracting Officer might enter "Table 1, CPI-U: U.S. City Average, by expenditure category and commodity and service group, found at <http://www.bls.gov/news.release/cpi.t01.htm>".

<sup>3</sup>Provide the information on who publishes the applicable Index used, *e.g.*, in the example for laboratory services, "the U.S. Department of Labor".

<sup>4</sup>State how often the Index is published, such as "monthly, around the middle of the month". Note that some Consumer Price Indexes are not published monthly. Ensure that the correct information is provided for the specific Index used.

following line items: \_\_\_\_.<sup>5</sup> The prices for these line items will be multiplied by the percentage increase or decrease and the resulting amount will be added to or deducted from the original line item price for that contract period (*e.g.*, Base Year) to arrive at the new contract price for those line items from the effective date of the adjustment to the beginning of the next contract adjustment period, rounded to the same number of decimal points as the prices originally bid. Calculations for option year contract terms will be based on the prices in the schedule for those option years.

(d) The dates of contract adjustment shall be \_\_\_\_<sup>6</sup> and the starting dates of each option year, if not already included in these dates. The Contracting Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified in this paragraph (d), shall obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting the unit or contract prices, as specified in paragraph (c). The adjusted unit or contract prices shall be effective for all orders placed or services provided after the date of contract adjustment as specified in this paragraph (d) until the beginning of the next contract adjustment period. If the Contracting Officer fails to act, the Contractor shall request in writing a contract adjustment and any subsequent adjustment shall be retroactive to the applica-

ble date of contract adjustment specified in this paragraph (d). The Contractor's entitlement to price increases for a prior contract period (base year or option year) is waived unless the Contractor's written request for an adjustment under this clause is received by the Contracting Officer no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year. The Government's right to contract decreases for prior contract periods (base year or option year) is waived unless the Contracting Officer processes a contract modification no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year.

(e) An example of an adjustment calculation is provided herein for informational purposes only.

(1) The original contract price or line item prices for that contract term (*e.g.*, base year) shall be used for all calculations during that particular contract term and new calculations shall be made for each and every contract adjustment period specified in paragraph (d) during that contract term.

(2) For purposes of this example, the contract prices for the line items as specified in paragraph (c) will be adjusted by the percentage calculated as follows:

Adjusting Index for the current period	196.6
Minus the Base Index .....	- 188.0
Equals the Index Point Change .....	8.6
Index Point Change Divided by the Base Index.	8.6/188.0 = .0457 *
Result Multiplied by 100 Equals the Percentage Change.	4.57%

(The Index Point Change Percentage).

\*This figure shall be rounded to the fourth decimal place. When the fifth decimal is 1 to 4, the figure shall be rounded down, 5 to 9, rounded up.

(3) For a line item with an original bid price of \$25.00 and a 4.57 percent Index Point Change increase as of the first contract adjustment period, as shown above, the calculations for a new contract price for the first contract adjustment period would be as follows:  $\$25.00 \times .0457 = \$1.14$ ,  $\$25 + \$1.14 = \$26.14$  \*\*. The new contract price for this line

item from the beginning of that first contract adjustment period until the start of the next contract adjustment period would be \$26.14 and the Contracting Officer would issue a contract modification reflecting this price change. \*\*The unit price adjustment shall be rounded up or down, as in paragraph

<sup>5</sup>Enter the line items that will be subject to adjustment or revise this paragraph to otherwise state what prices are subject to adjustment under this clause.

<sup>6</sup>Establish time periods for when the Contracting Officer will process adjustments. This could be "the first day of every quarter, January, April, July, and October" or "An-

nually on October 1st" or some other similar time periods. Since the contracting officer is responsible for initiating the change, the Contracting Officer must establish a reminder mechanism to ensure that the adjustments are accomplished within the time period specified.

(e)(1) of this clause, to match the number of decimal places in the original bid.

(4) If the Adjusting Index went down for the second adjustment period, reflecting only a 3 percent Index Point Change increase over the Base Index, the new price for this sample line item would be reduced for the second contract adjustment period from \$26.14 to \$25.75 as follows:  $\$25 \times .03 = \$0.75$ ,  $\$25 + \$0.75 = \$25.75$ . Note that the calculations for the second contract adjustment period are based on the original contract price for that contract term of \$25.00. The contract price for this line item is modified to reflect this new price for the second contract adjustment period.

(5) At the start of the first option year and each subsequent option year period (as well as for each contract adjustment period specified in paragraph (d) during that option year, if different), the Contracting Officer shall recalculate the contract or unit prices for that first option year based on any changes between the Adjusting Index and the Base Index, from the original contract award date to the start of the first option period, and based on the Contractor's new option year prices. Assume the Contractor's bid price for the first option year for the above sample line item was \$25.50 and the calculations shown in paragraph (e)(1) of this clause at the start of the first option period reflected a 6 percent Index Point Change. The new contract price for this sample line item at the start of the first option period would be calculated as follows:  $\$25.50 \times .06 = \$1.53$ ,  $\$25.50 + \$1.53 = \$27.03$ . The Contracting Officer would process a contract modification reflecting a revised contract price of \$27.03 for the first contract adjustment period in the first option year.

(f) Price adjustments pursuant to this clause, shall be documented by a contract modification issued by the Contracting Officer, show the Base Index (see paragraph (b)(1)), the Adjusting Index, the adjusted contract prices (see paragraph (c)), the mathematical calculations used to arrive at the adjusted contract prices, and the effective date of the adjustment (see paragraph (d)).

(g) At the start of each option year, the Contracting Officer shall, within 5 days of the start of the option year period, process a contract modification adjusting the option year prices by the then current Index Point Change percentage, if any, reflecting the new adjusted prices for that first contract adjustment period in that option year.

(h) In the event that \_\_\_\_\_<sup>7</sup> discontinues, or alters substantially, its method of calcu-

lating the Index cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines that the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify the use of an appropriate substitute index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

(i) Any dispute arising under this clause shall be resolved subject to the "Disputes" clause of the contract.

(End of clause)

[83 FR 7405, Feb. 21, 2018, as amended at 84 FR 46454, Sept. 4, 2019]

**852.216-72 Proportional economic price adjustment of contract price(s) based on a price index.**

As prescribed in 816.203-4(e)(2), insert the following clause:

**PROPORTIONAL ECONOMIC PRICE ADJUSTMENT OF CONTRACT PRICE(S) BASED ON A PRICE INDEX (MAR 2018)**

(a) To the extent that contract cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this contract for any option periods do not include any amount to protect against such contingent cost increases.

(b) The cost index, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_<sup>1</sup> as contained in \_\_\_\_\_<sup>2</sup>as published by

tracting Officer would enter "the U.S. Department of Labor".

<sup>1</sup>The Contracting Officer shall conduct market research to determine a suitable cost index for use in the solicitation. The index used is directly related to the type of commodity or service most likely to impact the Contractor and must approximately track the economic changes affecting the Contractor's costs. For transportation services, an appropriate index might be one that tracks the price of gasoline or diesel fuel. For example, in a solicitation for ambulance services, the Contracting Officer might enter into this block "the "Weekly U.S. Retail Gasoline Prices, Regular Grade" Index for New England" (or California or whichever index is the most appropriate).

<sup>2</sup>Specify where the index can be found, such as in an example for gasoline, "the Energy Information Administration website (see VAAM M816.203-70).

<sup>7</sup>Enter in the name of the entity whose index is used in the clause. In most cases when using this clause format, the index used would be a CPI-U Index and the Con-

\_\_\_\_\_.<sup>3</sup> All adjustments authorized under this clause shall be made by using the Base Index and Adjusting Indexes, which are published \_\_\_\_\_.<sup>4</sup>

(1) The *Base Index*, for the purposes of price adjustment under this clause, shall be the most recent Index published prior to the closing date for receipt of offers, or the due date for receipt of best and final offers if discussions are held. This Base Index shall remain constant throughout the life of the contract, including all options.

(2) The *Adjusting Index* shall be the most recent Index published prior to the date of contract adjustment, as specified in paragraph (f).

(c) For purposes of this clause, it will be conclusively presumed that \_\_\_\_\_ percent (%)<sup>5</sup> of the price of \_\_\_\_\_<sup>6</sup> represents the Base Cost of \_\_\_\_\_<sup>7</sup> and the resulting Base Cost will be the basis upon which adjustment will be made under this clause. This Base Cost will be used in calculating all adjust-

<sup>3</sup>Provide the information on who publishes the index, such as, in an example for gasoline, "the U.S. Department of Energy."

<sup>4</sup>State how often the index used is published, such as, in an example for an index for gasoline, "weekly each Monday at 5:00 p.m. (Eastern time)," or "Tuesday if Monday is a holiday."

<sup>5</sup>Prior to issuing the solicitation, the Contracting Officer must conduct market research to determine an appropriate percentage to include in this paragraph. The percentage should reflect that portion of the unit price for the services or supplies being acquired that is applicable to the indexed commodity. For instance, in the case of an ambulance contract, research might indicate that, at the time the solicitation is being drafted and based on prior per-mile bid prices, the cost of gasoline accounts for 10% of the per mile cost of operating an ambulance. For example, if the prior bid price had been \$1.60 per mile, ambulances average 10 miles per gallon, and the cost of gasoline had been \$1.559 per gallon, 1 mile's worth of gasoline (\$.16) would be approximately ten (10) percent of the prior per mile bid price of \$1.60 per mile. This percent must be stated in the solicitation so that the same figure applies to all bidders. This figure remains constant throughout the life of the contract.

<sup>6</sup>Enter in this block the portion of the contract that will be subject to price adjustment, e.g., "each one-way mile of ambulance services," or the line items that will be subject to price adjustment.

<sup>7</sup>Enter in this block the commodity applicable to the index being used, as in an example for an ambulance contract, "regular grade gasoline".

ments to the following line items: \_\_\_\_\_.<sup>8</sup> A new Base Cost will be calculated for each option year period based on the new option year prices.

(d) The percentage of the price of the indexed commodity (see paragraph (c)) remains fixed throughout the life of the contract and is not subject to modification under this clause. Any pricing actions pursuant to the "Changes" clause or other clause or provision of the contract, except for this clause, will be priced as though there were no provisions for economic price adjustment.

(e) All price adjustments shall be applicable only to the specific contract adjustment period to which the calculations are made. For every contract adjustment period, new calculations shall be made and new prices determined. Every adjustment during the Base Year shall be based on the original contract prices for that contract year and every adjustment during an option year shall be based on the original contract prices for that option year. The Contracting Officer must make new calculations for each and every contract adjustment period specified in paragraph (f) and at the beginning of each new option year, if different.

(f) The dates of contract adjustment shall be \_\_\_\_\_<sup>9</sup> and the starting dates of each option year, if not already included in these dates. The Contracting Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified herein, obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting the contract or unit price(s). The adjusted contract or unit price(s) shall be effective for all orders placed or services provided after the date of contract adjustment, as specified in this paragraph (f), until the date of the next contract adjustment. If the Contracting Officer fails to act, the Contractor shall request a contract adjustment in writing and any subsequent adjustment shall be retroactive to the applicable date of

<sup>8</sup>Enter the line items that will be subject to adjustment, as in an example for an ambulance contract, the line items that reflect the one-way cost per mile for ambulance services for the base year and for each option year.

<sup>9</sup>Establish time periods for when the Contracting Officer will process adjustments. This could be "the first day of each month" or "the first day of every quarter, January, April, July, and October" or "annually on October 1st" or some other similar time periods. Since the Contracting Officer is responsible for initiating the change, the Contracting Officer must establish a reminder mechanism to ensure that the adjustments are accomplished on time.

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contract adjustment. The Contractor's entitlement to price increases for a prior contract period (base year or option year) shall be waived unless the Contractor's written request for an adjustment under this clause is received by the Contracting Officer no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year. The Government's right to contract decreases for prior contract periods (base year or option year) shall be waived unless the Contracting Officer processes a contract modification no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year.

(g) An example of an adjustment calculation is provided herein for informational purposes only.

(1) For purposes of this example, assume that a contract is for ambulance services, that the contract price is \$2.10 per mile one way, that price adjustments will be made on the basis of the cost of gasoline, that the cost of gasoline represents 10% of the total cost per mile (the Base Cost is 10% of \$2.10 (the per mile one way price in Line Item X), or \$0.21), and that contract adjustments will be made quarterly. If the Base Index (the price of gasoline the week prior to receipt of bids) is \$1.559 per gallon and the price of gasoline at the first date of contract adjustment is \$2.129 per gallon, the calculations for contract price adjustment would be as follows:

Adjusting Index (most recent Index cost of gasoline as of the date of the first adjustment period).	\$2.129 per gallon.
Minus the Base Index (Index cost of gasoline as of the date of receipt of offers).	-\$1.559 per gallon.
Equals increase (or decrease) to the Base Index.	\$0.570.
Divide increase (or decrease) to the Base Index by the Base Index.	$\$0.570 + \$1.559 = .3656^*$ (36.56% increase).
Base Cost of \$0.21 (10% of \$2.10) multiplied by .3656 = \$0.0768 unit price increase. New Unit price following the adjustment is \$2.10 plus \$0.0768 = \$2.1768 per mile (rounded to \$2.18)**.	

\*This figure shall be rounded to the fourth decimal place. When the fifth decimal is 1 to 4, the figure shall be rounded down, 5 to 9, rounded up.

\*\*The unit price adjustment shall be rounded up or down, as above, to match the number of decimal places in the original bid.

(2) For the second contract adjustment period, all calculations would be based on the original contract bid price for that contract year, \$2.10 per mile in this example. If the price of gasoline goes down during the second adjustment period to the original Base Index price of \$1.559 per gallon, the adjusted contract price for that second period would return to \$2.10 per mile (there would be a zero percent increase or decrease to the Base Cost and thus no change to the original bid

price for that contract adjustment period). The Contracting Officer would then issue a contract modification returning the contract price from \$2.18 to \$2.10 per mile for that contract adjustment period. If, on the other hand, the price of gasoline actually went below the Base Index price, say to \$1.449 per gallon, the calculations for the second economic price adjustment period would be as follows:

Adjusting Index (most recent Index cost of gasoline as of the date of the second adjustment period).	\$1.449 per gallon.
Minus the Base Index (Index cost of gasoline as of the date of receipt of offers).	-\$1.559 per gallon.
Equals increase (or decrease) to Base Index.	(\$0.110) (a negative \$.11).
Divide increase (or decrease) to the Base Index by the Base Index.	$(\$0.11) + \$1.559 = (.0706)$ (7.06% decrease).

Base Cost of \$0.21 (10% of \$2.10) multiplied by (.0706) = (\$0.0148) unit price decrease.

New Unit price following the second economic price adjustment is \$2.10 minus \$0.0148 = \$2.0852 per mile (rounded to \$2.09).

(3) At the start of the first option year, the Contracting Officer shall recalculate the price per mile based on any changes in the price of gasoline from the original contract award date and based on the Contractor's new first option year price per mile. Assuming the Contractor's bid price per mile for the first option year was \$2.25 per mile, the new Base Cost for gasoline would be 10% of \$2.25, or \$0.225 (note that the original percent

figure from paragraph (c) (10% in this sample) stays constant throughout the life of the contract), but the Base Cost would change if the option year contract price changes. If the Adjusting Index for gasoline at the start of the first option year was now up to \$1.899 per gallon, the new first option year price for the first contract adjustment period would be calculated as follows:

Adjusting Index (most recent Index cost of gasoline as of the first day of the first option period).	\$1.899 per gallon.
Minus the Base Index (Index cost of gasoline as of the date of receipt of offers).	–\$1.559 per gallon.
Equals increase (or decrease) to the Base Index.	\$0.340.
Divide the increase (or decrease) to the Base Index by the Base Index.	\$0.34 + \$1.559 = .2181 (21.81% increase).
Base Cost of \$0.225 (10%* of \$2.25) multiplied by .2181 = \$0.0491 unit price increase.	
New Unit price for the first contract adjustment period in the first option year is \$2.25 plus \$0.0491 = \$2.2991 per mile (rounded to \$2.30 per mile).	

\*Note that the percentage remains constant (10%) but that the Base Cost has been increased for the first contract adjustment period in the first option year, since the Base Cost is a percentage of the first option year unit cost per mile (in this sample), and the unit cost per mile has increased in this sample for the first option year from \$2.10 to \$2.25. Although the new unit price for the first contract adjustment period of the first option year following application of the economic price adjustment in this sample would be \$2.30 per mile, all economic price adjustment calculations made during that first option year would be based on the original first option year bid price (\$2.25 in this sample). If in the second contract adjustment period of the first option year, the calculations resulted in a unit price increase for gasoline of \$0.0332, the adjusted price for that period would be \$2.25 + \$0.0332 = \$2.2832, rounded to \$2.28 per mile.

(h) Price adjustments pursuant to this clause, which shall be made by contract modification issued by the Contracting Officer, shall show the Base Index (see paragraph (b)(1)), the Adjusting Index, the Base Cost (see paragraph (c)), the mathematical calculations used to arrive at the adjusted contract unit price, and the effective date of the adjustment.

(i) In the event that \_\_\_\_\_<sup>10</sup> discontinues, or alters substantially, its method of calcu-

lating the Index cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines that the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute index, effective on the date the Index specified herein begins to consistently

<sup>10</sup>Enter in the name of the entity whose index is used in the clause. In the example for ambulance services using the "Weekly U.S. Retail Gasoline Prices, Regular Grade"

index; the Contracting Officer would enter the "Energy Information Administration, Department of Energy".

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and substantially fail to reflect market conditions.

(j) Any dispute arising under this clause shall subject to the “Disputes” clause of the contract.

(End of clause)

[83 FR 7406, Feb. 21, 2018, as amended at 84 FR 46454, Sept. 4, 2019]

### **852.216-73 Economic price adjustment—state nursing home care for veterans.**

As prescribed in 816.203-4(e)(3), insert the following clause:

#### **ECONOMIC PRICE ADJUSTMENT—STATE NURSING HOME CARE FOR VETERANS (MAR 2018)**

This clause does not apply to rates for non-Medicaid nursing homes.

(a) *Rate Determination.* The per diem rate is established by the current Medicaid rate for Medicaid approved nursing home care plus a fair market amount (percentage) to cover the costs of supplies, services, and equipment above that provided under Medicaid established by the local State Medicaid Agency (SMA). Rates established after the effective date of this contract will require a modification to the contract by the Contracting Officer.

(1) The Medicaid rate covers room, board, and routine nursing care services.

(2) For all levels of nursing care a percentage is added for routine ancillary services/supplies, such as drugs, nursing supplies, oxygen (occasional use), x-ray, laboratory, physician visits, and rental equipment.

(3) Special equipment, *e.g.* Clinitron bed, is not considered routine ancillary services (and may not be provided by the VA).

(4) Drug costs which comprise more than eight and one-half percent (8.5%) of the per diem rate are generally not considered routine ancillary supplies (and may not be provided by the VA).

(5) Rehabilitation therapies will be provided as distinct levels of care, *i.e.*, skilled, intermediate, and custodial care. Hospice Care and Dialysis are not included in the rate. Payment for Hospices and Dialysis services is provided by the VA or other payers as determined by the Veteran with the VA's approval.

(b) *Economic Price Adjustment.* This clause does not apply to ancillary services that may be added or deleted from the agreement.

(1) The per diem rate(s) will apply throughout the term of this contract, including extension period(s). The rate(s) may be adjusted only to reflect a change in a Medicaid rate as authorized by the SMA. Normally, this will be on an annual basis. The negotiated percentage above the Medicaid rate, to cover the all-inclusive nature of the con-

tract, will not be renegotiated; but will be applied and added to the new Medicaid rate for the adjusted per diem rate for each level of care item. In this regard, new rates will be negotiated requiring a modification to the contract. Each per diem price adjustment under this clause is subject to the following limitations:

(2) Any adjustment shall be limited to the effect of increases or decreases in the approved SMA's patient care components within the affected Medicaid groups.

(3) Adjustments will occur no more frequently than those issued by the SMA.

(4) No adjustments are made until the Contracting Officer receives from the SMA an authenticated copy of the new rates signed and dated at the top right of the document by the authorized nursing home official. Within ten days after this occurs, the Contracting Officer will execute an approval signature and date at the approximate locations of the nursing home official's signature, the action of which will serve as the effective date of the adjusted rate. A copy of the fully executed document will be sent to the nursing home official for record keeping purposes.

(End of clause)

[83 FR 7408, Feb. 21, 2018, as amended at 84 FR 46455, Sept. 4, 2019]

### **852.216-74 Economic price adjustment—medicaid labor rates.**

As prescribed in 816.203-4(e)(4), insert the following clause:

#### **ECONOMIC PRICE ADJUSTMENT—MEDICAID LABOR RATES (MAR 2018)**

This clause does not apply to rates for non-Medicaid nursing homes.

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the Medicaid rate set by the State Medicaid Agency (SMA) for contract line item increases or decreases in the Schedule. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and the amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) The Contracting Officer and the Contractor shall negotiate a price adjustment to the contract's unit prices and its effective

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date upon receipt of the notice and data under paragraph (a) of this clause. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases of the Medicaid labor rates (including fringe benefits) shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract as follows:

(1) Include the price adjustment and its effective date;

(2) Revise the Medicaid labor rates (including fringe benefits) as shown in the Schedule to reflect the increases or decreases resulting from the SMA adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Adjustment shall be limited to the effect on unit prices of the increases or decreases of the Medicaid rates of pay for labor (including fringe benefits) shown in the Schedule. There shall be no adjustment for changes in rates or unit prices other than those shown in the Schedule.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least three percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases made under this clause.

(d) The Contracting Officer, precluding certified cost and pricing data may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

[83 FR 7408, Feb. 21, 2018, as amended at 84 FR 46455, Sept. 4, 2019]

**852.216-75 Economic price adjustment clause—fuel surcharge.**

As prescribed in 816.203-4(e)(5), insert the following clause:

**ECONOMIC PRICE ADJUSTMENT—FUEL SURCHARGE (MAR 2018)**

(a) To the extent that contract fuel cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this contract for any option periods do not include any amount to protect against such contingent fuel cost increases.

(b) The fuel cost index, for the purpose of price adjustment under this clause, shall be the "Weekly Retail On-Highway Diesel Prices Index."

The Base Fuel Cost, for the purpose of price adjustments under this clause, shall be the most recent Index Weekly Average Diesel Fuel Price per gallon published prior to the closing date for receipt of offers, or the due date for receipt of final proposal revisions if discussions are held.

(c) For purposes of this clause, it will be conclusively presumed that x% increase or decrease of the Base Fuel Cost represents a reasonable fluctuation of diesel fuel prices. The Base Fuel Cost ( $\pm$ ) x% price range will be determined for the base contract year and will remain constant throughout the life of the contract, including option years. Base Fuel Cost price range is documented at time of contract award.

(d) Increases (or decreases) in the diesel fuel costs (Base Fuel Cost x%) as listed on the Index two weeks prior to the end of each calendar quarter can trigger a request from the Contractor to the Government (or from the Government to the Contractor) for cost adjustments. Notice must be in writing to the Subsistence Prime Vendor (SPV) Contracting Officer (or Contracting Officer's Representative) no less than ten days prior to the beginning of the next quarter.

(e) Since fuel cost is only a part of the SPV Contracted distribution cost, the adjustment will be made as a penny per delivered case for every ten cent fuel price per gallon increase or decrease to the Base Fuel Cost x%. The difference is rounded down to the nearest whole cent and will be added to last line of each invoice noted as "Fuel Adjustment".

Example calculation of  
fuel price change:.

Price \$2.50 Base (+ or -) 15% Average National Diesel Fuel \$2.88 - \$2.13.



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3rd QTR (3rd week June)	\$3.05 – 2.88 = \$.17 (rounded down to 10 cents)	Add one
first year. Fuel Price	cent per delivered case to each invoice, starting	
\$3.05 Calculation:	first Monday of July.	
3rd QTR Diesel Fuel Price	\$2.13 – 1.80 = \$.33 (rounded down to \$.30 cents)	Credit
decrease.	each invoice.	
\$1.80 Calculation: .....	\$.03 cents per delivered case.	

(f) Once approved, the date for contract fuel price adjustment will be the first Monday of the first month of each quarter unless otherwise designated at time of contract award.

(g) The Contracting Officer shall retain a copy of the Base Fuel Index establishing the Base Fuel Cost and the calculation of the price range incorporating the (±) x% adjustment in the contract file. All subsequent changes will be documented within the contract file and communicated to the Contractor and VA SPV customers via email one week prior to the fuel price adjustment implementation.

(h) Any adjustments for fuel price changes will only be implemented if requested in writing, reviewed by both parties, and provided within the designated time frames. No retroactive cost adjustments will be made. A contract modification will be issued at inception of first increase or decrease detailing Base Fuel Cost, price range, and calculation of first fuel adjustment charge. Adjustment will remain in effect with quarterly calculation changes as needed until price falls within Base Fuel Cost price range. A contract modification will be issued to terminate the adjustment when price returns to Base Fuel Cost (±) x% price range.

(i) In the event that “the Energy Information Administration, Department of Energy” discontinues, or substantially alters its method of calculating the national average diesel fuel prices cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute Index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

(j) Any dispute arising under this clause shall be determined in accordance with and subject to the “Disputes” clause of the contract.

(End of clause)

[83 FR 7409, Feb. 21, 2018, as amended at 84 FR 46455, Sept. 4, 2019]

**852.216-76 Requirements—Supplement for Mortuary Services.**

As prescribed in 816.506-70, insert the following clause:

**REQUIREMENTS—SUPPLEMENT FOR MORTUARY SERVICES (OCT 2019)**

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

- (1) The supplies or services being ordered;
- (2) The quantities to be furnished;
- (3) Delivery or performance dates;
- (4) Place of delivery or performance;
- (5) Packing and shipping instructions;
- (6) The address to send invoices; and
- (7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor’s facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract:

(End of clause)

[84 FR 46455, Sept. 4, 2019]

**852.217-70 Contract Action Definitization.**

As prescribed in 817.7005(a), insert the following clause:

**CONTRACT ACTION DEFINITIZATION (JUL 2019)**

(a) A [Insert specific type of contract action] is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract action that will include all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the

undefinitized contract action, all clauses required by law on the date of execution of the definitive contract action, and any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a \_\_\_\_\_ *[Insert type of proposal, e.g., fixed-price, or cost-and-fee]* proposal with cost or pricing data, as appropriate, supporting it.

(b) The schedule for definitizing this contract action is as follows *[Insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy plans, subcontracting plans, and cost or pricing data]*.

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of a Contracting Officer one level above, determine a reasonable price or fee in accordance with FAR subpart 15.4 and FAR part 31, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to FAR 52.216-24, Limitation of Government Liability.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract action resulting from this undefinitized contract action will include a negotiated \_\_\_\_\_ *[Insert "cost/price ceiling" or "firm-fixed-price"]* in no event to exceed \_\_\_\_\_ *[Insert the not-to-exceed amount]*.

(End of clause)

[84 FR 29394, June, 24, 2019]

#### **852.219-9 VA Small business subcontracting plan minimum requirements.**

As prescribed in subpart 819.709, insert the following clause:

##### **VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009)**

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

(c) For a commercial plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small businesses shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in 819.407.

(End of clause)

[74 FR 64636, Dec. 8, 2009]

#### **852.219-10 VA Notice of total service-disabled veteran-owned small business set-aside.**

As prescribed in 819.7009, insert the following clause:

##### **VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (DEC 2009)**

(a) *Definition.* For the Department of Veterans Affairs, "Service-disabled veteran-owned small business concern":

(1) Means a small business concern:

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(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans (or eligible surviving spouses);

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans (or eligible surviving spouses) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(b) *General.* (1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a service-disabled veteran-owned small business concern.

(c) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation.

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(e) Any service-disabled veteran-owned small business concern (non-manufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

[74 FR 64637, Dec. 8, 2009]

### 852.219-11 VA notice of total veteran-owned small business set-aside.

As prescribed in 819.7009, insert the following clause:

#### VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE (DEC 2009)

(a) *Definition.* For the Department of Veterans Affairs, "Veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans;

(ii) The management and daily business operations of which are controlled by one or more veterans;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

(2) "Veteran" is defined in 38 U.S.C. 101(2).

(b) *General.* (1) Offers are solicited only from veteran-owned small business concerns. All service-disabled veteran-owned small businesses are also determined to be veteran-owned small businesses if they meet the criteria identified in paragraph (a)(1) of this

section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a veteran-owned small business concern.

(c) *Agreement.* A veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible veteran-owned small business concerns;

(2) Supplies (other than acquisition from a non-manufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible veteran-owned small business concerns.

(d) A joint venture may be considered a veteran-owned small business concern if:

(1) At least one member of the joint venture is a veteran-owned small business concern, and makes the following representations: That it is a veteran-owned small business concern, and that it is a small business concern under the NAICS code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), except that the principal company may be a veteran-owned small business concern or a service-disabled veteran-owned small business concern.

(e) Any veteran-owned small business concern (non-manufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

[74 FR 64637, Dec. 8, 2009]

#### **852.219-71 VA mentor-protégé program.**

As prescribed in 819.7115(a), insert the following clause:

##### **VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)**

(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as subcontractors.

(b) The program consists of:

(1) Mentor firms, which are contractors capable of providing developmental assistance;

(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and

(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.

(c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a mentor firm in providing assistance to a protégé firm and apply those costs for purposes of determining whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information.

(End of clause)

[74 FR 64638, Dec. 8, 2009]

#### **852.219-72 Evaluation factor for participation in the VA mentor-protégé program.**

As prescribed in 819.7115(b), insert the following clause:

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EVALUATION FACTOR FOR PARTICIPATION IN THE VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)

This solicitation contains an evaluation factor or sub-factor regarding participation in the VA Mentor-Protégé Program. In order to receive credit under the evaluation factor or sub-factor, the offeror must provide with its proposal a copy of a signed letter issued by the VA Office of Small and Disadvantaged Business Utilization approving the offeror's Mentor-Protégé Agreement.

(End of clause)

[74 FR 64638, Dec. 8, 2009]

### **852.222-70 Contract work-hours and safety standards—nursing home care for veterans.**

As prescribed in 822.305, insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARDS—NURSING HOME CARE FOR VETERANS (MAY 2018)

(a) No Contractor or subcontractor under this contract shall prohibit the payment of overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of Contract Work Hours and Safety Standards (the statute) (40 U.S.C. 3701, *et seq.*), provided—

(1) The Contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(2) There is an agreement or understanding between the Contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;

(3) Employees receive overtime compensation at a rate no less than 1½ times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

(4) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(b) *Subcontracts.* The Contractor shall insert the text of this clause, including this paragraph (b), in subcontracts at any tier. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (b) of this clause.

(End of clause)

[83 FR 16210, Apr. 16, 2018]

### **852.223-70 Instructions to offerors—Sustainable Acquisition Plan.**

As prescribed in 823.103-71, when the Contracting Officer deems a Sustainable Acquisition Plan necessary, the Contracting Officer shall insert the following provision:

INSTRUCTIONS TO OFFERORS—SUSTAINABLE ACQUISITION PLAN (SEP 2019)

Offerors shall include a Sustainable Acquisition Plan in their technical proposals. The plan must describe the approach and quality assurance mechanisms for applying FAR subpart 23.1, Sustainable Acquisition Policy and other Federal laws, regulations and Executive Orders governing sustainable acquisition. The plan shall clearly identify those products and services included in the proposal.

(End of provision)

[84 FR 45682, Aug. 30, 2019]

### **852.223-71 Safety and health.**

As prescribed by 823.303-70, the Contracting Officer shall insert the following clause:

SAFETY AND HEALTH (SEP 2019)

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State, and local laws and regulations applicable to the work being performed under this contract. These laws are implemented or enforced by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) and other regulatory/enforcement agencies at the Federal, State, and local levels.

(1) Additionally, the Contractor shall comply with the following regulations when developing and implementing health and safety operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

(i) 29 CFR 1910.1030, Bloodborne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories. These regulations are available at <https://www.osha.gov/>.

(ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*) Copies are available from the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(2) The following Government guidelines are recommended for developing and implementing health and safety operating procedures and practices for both personnel and facilities:

(i) Biosafety in Microbiological and Biomedical Laboratories, Centers for Disease Control and Prevention (CDC), available at <http://www.cdc.gov/biosafety/publications/index.htm>.

(ii) Prudent Practices in the Laboratory, National Research Council, National Academy Press, Washington, DC 20001, available at <http://www.nap.edu>.

(b)(1) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials; the injury or death of any person; or damage to property incidental to work performed under the contract resulting from toxic or hazardous materials and resulting in any or all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency.

(2) The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State, or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(c) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State, or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any such stop work order shall form the basis for a request for extension or costs or damages by the Contractor.

(d) The Contractor shall insert this clause in each subcontract involving toxic substances or hazardous materials. The Contractor is responsible for the compliance of its subcontractors with the provisions of this clause.

(End of clause)

[84 FR 45682, Aug. 30, 2019]

#### **852.228-70 Bond premium adjustment.**

As prescribed in 828.106-70, insert the following clause:

#### **BOND PREMIUM ADJUSTMENT (JAN 2008)**

When net changes in original contract price affect the premium of a Corporate Surety Bond by \$5 or more, the Government, in determining the basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of clause)

#### **852.228-71 Indemnification and Insurance.**

As prescribed in 828.306, insert the following clause:

#### **INDEMNIFICATION AND INSURANCE (MAR 2018)**

(a) *Indemnification.* The Contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this contract. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the Contractor, and subject to the approval by the Contracting Officer, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of this contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workers' compensation and employer's liability coverage will conform to applicable State law requirements for the service defined, whereas general liability and automobile liability of comprehensive type shall, in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. State-approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. [Contracting Officer's Note: In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least \$200,000 per passenger and \$500,000 per

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occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.]

(End of clause)

[83 FR 7409, Feb. 21, 2018, as amended at 84 FR 46455, Sept. 4, 2019]

### **852.228-72 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonds.**

As prescribed in 828.106-71, insert the following clause:

ASSISTING SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES AND VETERAN-OWNED SMALL BUSINESSES IN OBTAINING BONDS

(DEC2009)

Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist protégé firms under VA's Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

[74 FR 64638, Dec. 8, 2009]

### **852.228-73 Indemnification of contractor—hazardous research projects.**

As prescribed in 828.7003, insert the following clause:

INDEMNIFICATION OF CONTRACTOR—HAZARDOUS RESEARCH PROJECTS (MAR 2018)

(a) This contract involves work with a risk of an unusually hazardous nature as specifically defined in the contract. The government shall indemnify the Contractor, including subcontractors of any tier, against losses or liability specified in paragraphs (b) and (c) of this clause if—

(1) The losses or liability arise out of or results from a risk defined in this contract as unusually hazardous; and

(2) The losses or liability are not covered by the financial protection required by paragraph (c).

(b) The Government shall indemnify a Contractor for—

(1) Liability (including reasonable expenses of litigation or settlement) to third persons for death, bodily injury, or loss of or damage to property from a risk that the contract de-

fines as unusually hazardous. This indemnification shall not cover liability under State or Federal worker's injury compensation laws to employees of the Contractor who are both:

(i) Employed at the site of the contract work; and

(ii) Working on the contract for which indemnification is granted.

(2) The Government shall also indemnify the Contractor for loss of or damage to property of the Contractor from a risk that the contract defines as unusually hazardous.

(c) A Contractor shall have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the Contractor's property. Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination that provides the maximum amount required. The financial protection provided must meet one of the following—

(1) The maximum amount of insurance available from private sources; or

(2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(d) Actions in event of a claim—

(1) The Contractor shall notify the Contracting Officer of any claim or suit against the Contractor for death, bodily injury, or loss of or damage to property; and

(2) The Government may elect to control or assist in the defense of any suit or claim for which indemnification is provided in the contract.

(End of clause)

[83 FR 7410, Feb. 21, 2018, as amended at 84 FR 46455, Sept. 4, 2019]

### **852.229-70—852.229-71 [Reserved]**

### **852.232-70 Payments Under Fixed-Price Construction Contracts (Without NAS-CPM).**

As prescribed in 832.111-70, insert the following clause in contracts that do not contain a section entitled "Network Analysis System—Critical Path"

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (WITHOUT NAS-CPM) (NOV 2018)

The clause FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, is implemented as follows:

(a) *Retainage.* (1) The Contracting Officer may retain funds—

(i) Where performance under the contract has been determined to be deficient or the Contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following—

(i) Unsatisfactory progress as determined by the Contracting Officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this paragraph (a)(3) shall be construed as limiting the Contracting Officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The Contractor shall submit a schedule of cost to the Contracting Officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to

the Contractor for work completed. This schedule shall show cost by the work activity/event for each building or unit of the contract, as instructed by the resident engineer.

(1) The work activities/events shall be subdivided into as many sub-activities/events as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and the resident engineer may require the Contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sums of the sub-activities/events, as applied to each work activity/event, shall equal the total cost of such work activity/event. The total cost of all work activities/events shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed in the table in this paragraph (b)(5). The percentages listed in the following table are proportions of the cost listed in the Contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the Contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system .....	10
Incinerators (medical waste and trash) .....	5
Sewage treatment plant equipment .....	5
Water treatment plant equipment .....	5
Washers (dish, cage, glass, etc.) .....	5
Sterilizing equipment .....	5
Water distilling equipment .....	5
Prefab temperature rooms (cold, constant temperature) .....	5
Entire air-conditioning system (Specified under 600 Sections) .....	5
Entire boiler plant system (Specified under 700 Sections) .....	5
General supply conveyors .....	10
Food service conveyors .....	10
Pneumatic soiled linen and trash system .....	10
Elevators and dumbwaiters .....	10
Materials transport system .....	10
Engine-generator system .....	5
Primary switchgear .....	5
Secondary switchgear .....	5
Fire alarm system .....	5
Nurse call system .....	5
Intercom system .....	5
Radio system .....	5
TV (entertainment) system .....	5

(c) In addition to this cost schedule, the Contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the Contractor in pre-

paring its bid and will not be binding as pertaining to any contract changes.

(d) The Contracting Officer will consider for monthly progress payments material and/



or equipment procured by the Contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as the Contracting Officer approves, including but not limited to the following—

(1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;

(2) The materials and/or equipment are approved by the resident engineer;

(3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;

(4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and

(5) The Contractor obtains the concurrence of its surety for off-site storage.

(e) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

(f) The Contracting Officer will notify the Contractor in writing within 10 calendar days of exercising retainage against any payment in accordance with FAR clause 52.232-5(e). The notice shall disclose the amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of clause)

*Alternate I (Nov 2018).* If the specifications include guarantee period services, the Contracting Officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The Contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The Contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program that shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The Contractor shall also submit the established salary costs, including employee fringe benefits, and what the Contractor reasonably expects to pay over the guarantee period, all of which will be subject to the Contracting Officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and

paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the Contracting Officer shall inform the Contractor of the unsatisfactory performance, allowing the Contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

[83 FR 49307, Oct. 1, 2018]

#### **852.232-71 Payments Under Fixed-Price Construction Contracts (Including NAS-CPM).**

As prescribed in 832.111-70, insert the following clause in contracts that contain a section entitled "Network Analysis System—Critical Path Method (NAS-CPM)."

#### **PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (INCLUDING NAS-CPM) (NOV 2018)**

The clause FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, is implemented as follows:

(a) *Retainage.* (1) The Contracting Officer may retain funds—

(i) Where performance under the contract has been determined to be deficient or the Contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following—

(i) Unsatisfactory progress as determined by the Contracting Officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this paragraph (a)(3) shall be construed as limiting the Contracting Officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The Contractor shall submit a schedule of costs in accordance with the requirements

of section "Network Analysis System—Critical Path Method (NAS-CPM)" to the Contracting Officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the Contractor for work completed.

(1) Costs as shown on this schedule must be true costs and the resident engineer may require the Contractor to submit its original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all work activities/events shall equal the contract price.

(3) Insurance and similar items shall be prorated and included in each work activity/

event cost of the critical path method (CPM).

(4) The CPM shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this clause. The percentages listed in paragraph (b)(5) will be used to determine the cost of adjust and test work activities/events and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the Contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

#### VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system .....	10
Incinerators (medical waste and trash) .....	5
Sewage treatment plant equipment .....	5
Water treatment plant equipment .....	5
Washers (dish, cage, glass, etc.) .....	5
Sterilizing equipment .....	5
Water distilling equipment .....	5
Prefab temperature rooms (cold, constant temperature) .....	5
Entire air-conditioning system (Specified under 600 Sections) .....	5
Entire boiler plant system (Specified under 700 Sections) .....	5
General supply conveyors .....	10
Food service conveyors .....	10
Pneumatic soiled linen and trash system .....	10
Elevators and dumbwaiters .....	10
Materials transport system .....	10
Engine-generator system .....	5
Primary switchgear .....	5
Secondary switchgear .....	5
Fire alarm system .....	5
Nurse call system .....	5
Intercom system .....	5
Radio system .....	5
TV (entertainment) system .....	5

(c) In addition to this cost schedule, the Contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the Contractor in preparing its bid and will not be binding as pertaining to any contract changes.

(d) The Contracting Officer will consider for monthly progress payments material and/or equipment procured by the Contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as the Contracting Officer approves, including but not limited to the following—

(1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;

(2) The materials and/or equipment are approved by the resident engineer;

(3) The materials and/or equipment are stored separately and are readily available

for inspection and inventory by the resident engineer;

(4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and

(5) The Contractor obtains the concurrence of its surety for off-site storage.

(e) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

(f) The Contracting Officer will notify the Contractor in writing within 10 calendar-days of exercising retainage against any payment in accordance with FAR clause 52.232-

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5(e). The notice shall disclose the amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of clause)

*Alternate I (Nov 2018).* If the specifications include guarantee period services, the Contracting Officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The Contractor shall show on the critical path method (CPM) the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CPM cost loaded network. The cost submitted shall be subject to the approval of the Contracting Officer. The activity on the CPM shall have money only and not activity time.

(ii) The Contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The Contractor shall also submit the established salary costs, including employee fringe benefits, and what the Contractor reasonably expects to pay over the guarantee period, all of which will be subject to the Contracting Officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the Contracting Officer shall inform the Contractor of the unsatisfactory performance, allowing the Contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

[83 FR 49309, Oct. 1, 2018]

### 852.232-72 Electronic submission of payment requests.

As prescribed in 832.7001-2, insert the following clause:

#### ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2018)

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* has the meaning given in FAR 32.001;

(2) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This of-

fice may be different from the office issuing the payment;

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests;

(4) *Invoice payment* has the meaning given in FAR 32.001; and

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) *Electronic payment requests.* Except as provided in paragraph (e) of this clause, the Contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data transmission.* A Contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System at the current website address provided in the contract.

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI).

(d) *Invoice requirements.* Invoices shall comply with FAR 32.905.

(e) *Exceptions.* If, based on one of the circumstances in this paragraph (e), the Contracting Officer directs that payment requests be made by mail, the Contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for—

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by Contracting Officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

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(End of clause)

[83 FR 49310, Oct. 1, 2018]

**852.233-70 Protest content/alternative dispute resolution.**

As prescribed in 833.106-70(a), insert the following provision:

PROTEST CONTENT/ALTERNATIVE DISPUTE  
RESOLUTION (SEP 2018)

(a) Any protest filed by an interested party shall—

(1) Include the name, address, fax number, email and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's representative and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(c) Bidders/offers and Contracting Officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of provision)

[83 FR 46417, Sept. 13, 2018]

**852.233-71 Alternate protest procedure.**

As prescribed in 833.106-70(b), insert the following provision:

ALTERNATE PROTEST PROCEDURE (SEP 2018)

(a) As an alternative to filing a protest with the Contracting Officer, an interested party may file a protest by mail or electronically with: Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (003A2C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or Email: [EDProtests@va.gov](mailto:EDProtests@va.gov).

(b) The protest will not be considered if the interested party has a protest on the same or

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similar issue(s) pending with the Contracting Officer.

(End of provision)

[83 FR 46418, Sept. 13, 2018]

**852.236-70 [Reserved]**

**852.236-71 Specifications and drawings for construction.**

As prescribed in 836.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR  
CONSTRUCTION (APR 2019)

The clause entitled "Specifications and Drawings for Construction" in FAR52.236-21 is supplemented as follows:

(a) The Contracting Officer's interpretation of the drawings and specifications will be final, subject to the Disputes clause.

(b) The Contractor shall—

(1) Check all drawings and specifications furnished immediately upon receipt;

(2) Compare all drawings and the specifications, and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Drawings of greater detail shall govern over drawings of lesser detail unless specifically noted otherwise; and

(2) Figures and numerical quantities noted on drawings govern over scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
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(End of clause)

[84 FR 9974, Mar. 19, 2019]

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### 852.236-72 Performance of Work by the Contractor.

As prescribed in 836.501, insert the following clause:

#### PERFORMANCE OF WORK BY THE CONTRACTOR (APR 2019)

(a) In accordance with FAR 52.236-1, the contract work accomplished on the site by laborers, mechanics, and foreman/superintendent on the Contractor's payroll and under their direct supervision shall be used in establishing the percent of work to be performed by the Contractor. Cost of material and equipment installed by such labor may be included. The work by the Contractor's executive, administrative and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The Contractor shall submit, simultaneously with the schedule of costs required by the Payments under Fixed-Price Construction Contracts clause of the contract, a statement designating the portions of contract work to be performed with the Contractor's own forces. The approved schedule of costs will be used in determining the value of a work activity/event, or portions thereof, of the work for the purpose of this article.

(c) Changes to established activity/event identifiers or responsibility codes for Contractor activities shall not be made without approval from the Contracting Officer.

(d) In the event the Contractor fails to comply with FAR 52.236-1, Performance of Work by the Contractor, the Contracting Officer will withhold retention in the amount of 15% of the value of any work activity/element being invoiced that was not authorized by the Contracting Officer to be performed by someone other than the prime Contractor's own workforce.

(End of clause)

*Alternate I (APR 2019).* For requirements which include a Network Analysis System (NAS), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01310 or 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the Contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the Contractor's forces for the purpose of this article.

[84 FR 9974, Mar. 19, 2019]

### 852.236-73—852.236-78 [Reserved]

### 852.236-79 Contractor production report.

As prescribed in 836.573, insert the following clause:

#### CONTRACTOR PRODUCTION REPORT (APR 2019)

(a) The Contractor shall furnish to the resident engineer, for each workday, a consolidated report for the preceding workday. Reporting shall begin from date of mobilization until the date of final acceptance except for authorized holidays. VA Form 10101, Contractor Production Report, or a Contractor generated form containing the same type of information shall be signed, dated and submitted by the Contractor superintendent.

(b) Each report shall include and specifically identify at least one safety topic germane to the jobsite that day.

(End of clause)

[84 FR 9974, Mar. 19, 2019]

### 852.236-80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

#### SUBCONTRACTS AND WORK COORDINATION (APR 2019)

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the Contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the Contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work, or require dismissal from the work, of any subcontractor or subcontractor employee who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the Contracting Officer to be incompetent, careless, or otherwise objectionable.

(End of clause)

*Alternate I (APR 2019).* For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The Contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes two inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than  $\frac{3}{8}$ -inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproductions) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall re-

quest instructions as to how to proceed if adjustments beyond those of usual trades' coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

[84 FR 9974, Mar. 19, 2019]

#### **852.236-81—852.236-89 [Reserved]**

#### **852.236-90 Restriction on submission and use of equal products.**

As prescribed in 836.202-70, insert the following clause in solicitations and contracts when it is determined that only one product will meet the Government's minimum needs and the submission of "equal" products is not permitted:

##### **RESTRICTION ON SUBMISSION AND USE OF EQUAL PRODUCTS (APR 2019)**

(a) This clause applies to the following items: [*Contracting Officer fill-in*]

(b) Notwithstanding the "Material and Workmanship" clause of this contract, FAR 52.236-5(a), nor any other clause or provision, only brand name products for the items listed above will be authorized for use on this contract.

(End of clause)

[84 FR 9975, Mar. 19, 2019]

#### **852.236-92 Notice to bidders—additive or deductive bid line items.**

As prescribed in 836.580, insert the following provision:

##### **NOTICE TO BIDDERS—ADDITIVE OR DEDUCTIVE BID LINE ITEMS (APR 2019)**

(a) Additive or deductive line items in the bid schedule shall be evaluated to determine the low offeror and the items to be awarded. The evaluation shall be made as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low bid shall be the Bidder that—

(i) Is otherwise eligible for award; and  
(ii) Offers the lowest aggregate amount for the first or base line item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive line items that provide the most features within the funds determined available.

(3) All bids shall be evaluated on the basis of the same additive or deductive line items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that line item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) Example: "The amount available is \$100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid schedule) are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000. Offeror B's base bid and four additives are \$80,000, \$16,000, \$9,000, \$7,000, and \$4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be \$99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed \$100,000."

(End of provision)

[84 FR 9975, Mar. 19, 2019]

#### **852.237-70 Indemnification and medical liability insurance.**

As prescribed in 837.403-70(a), insert the following clause:

##### **INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (OCT 2019)**

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over profes-

sional aspects of the services rendered including, by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: *[Contracting Officer's Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.]* However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

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(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

[84 FR 46455, Sept. 4, 2019]

**852.237-71 Nonsmoking policy for children's services.**

As prescribed in 837.403-70(b), insert the following clause:

NONSMOKING POLICY FOR CHILDREN'S  
SERVICES (OCT 2019)

(a) Smoking in facilities where certain federally funded children's services are provided shall be prohibited. The Pro-Children Act of 2001 (20 U.S.C. 7181-7183) prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

[84 FR 46455, Sept. 4, 2019]

**852.237-72 Crime Control Act—reporting of child abuse.**

As prescribed in 837.403-70(c), insert the following clause:

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CRIME CONTROL ACT—REPORTING OF CHILD  
ABUSE (OCT 2019)

(a) Public Law 101-647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

[84 FR 46456, Sept. 4, 2019]

**852.237-73 Crime Control Act—requirement for background checks.**

As prescribed in 837.403-70(d), insert the following clause:

CRIME CONTROL ACT—REQUIREMENT FOR  
BACKGROUND CHECKS (OCT 2019)

(a) Public Law 101-647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services, as defined in the Act, to children under the age of 18 undergo a criminal background check.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under the contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

[84 FR 46456, Sept. 4, 2019]



## Department of Veterans Affairs

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### 852.237-74 Non-discrimination in service delivery.

As prescribed in 837.110-70(a), the Contracting Officer shall insert the following clause in solicitations and contracts:

#### NON-DISCRIMINATION IN SERVICE DELIVERY (OCT 2019)

It is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the Contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The Contractor shall include this clause in all subcontracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

[84 FR 46456, Sept. 4, 2019]

### 852.237-75 Key personnel.

As prescribed in 837.110-70(b), insert the following clause:

#### KEY PERSONNEL (OCT 2019)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the Contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract. If the employee of the Contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as

necessary to reflect the agreement of the parties.

(End of clause)

[84 FR 46456, Sept. 4, 2019]

### 852.237-76 Award to single offeror.

As prescribed in 837.7001(a)(1), insert the following provision:

#### AWARD TO SINGLE OFFEROR (OCT 2019)

- (a) Award shall be made to a single offeror.
- (b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.
- (c) The Government will evaluate offers on the basis of the estimated quantities shown.
- (d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

*Alternate 1 (OCT 2019).* As prescribed in 837.7001(a)(2), insert the following paragraph (d) in lieu of paragraph (d) of the basic provision:

- (d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

[84 FR 46456, Sept. 4, 2019]

### 852.237-77 Area of Performance.

As prescribed in 837.7001(b)(1), insert the following clause:

#### AREA OF PERFORMANCE (OCT 2019)

- (a) The area of performance is as specified in the contract.
- (b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.
- (c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.
- (d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route

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from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

[84 FR 46456, Sept. 4, 2019]

**852.237-78 Performance and Delivery.**

As prescribed in 837.7001(b)(2), insert the following clause:

**PERFORMANCE AND DELIVERY (OCT 2019)**

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible, but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection is completed.

(End of clause)

[84 FR 46457, Sept. 4, 2019]

**852.237-79 Subcontracting.**

As prescribed in 837.7001(b)(3), insert the following clause:

**SUBCONTRACTING (OCT 2019)**

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

[84 FR 46457, Sept. 4, 2019]

**852.237-80 Health Department and Transport Permits.**

As prescribed in 837.7001(b)(4), insert the following clause:

**HEALTH DEPARTMENT AND TRANSPORT PERMITS (OCT 2019)**

The Contractor shall meet all State and local licensing requirements and obtain and

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furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

[84 FR 46457, Sept. 4, 2019]

**852.241-70 Disputes—Utility contracts.**

As prescribed in 841.501-70, insert the following clause:

**DISPUTES—UTILITY CONTRACTS (SEP 2020)**

(a) *Definition.* As used in this clause, *Independent regulatory body* means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

(b) *Independent Regulatory Body determinations.* The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to any determinations by the independent regulatory body having jurisdiction.

(End of Clause)

[85 FR 60078, Sept. 24, 2020]

**852.242-70 Government Construction Contract Administration.**

As prescribed in 842.272, insert the following clause. This is a fill-in clause.

**GOVERNMENT CONSTRUCTION CONTRACT ADMINISTRATION (OCT 2020)**

(a) Contract administration functions set forth in FAR 42.302 are hereby delegated to: [Insert name and office address of Contracting Officer]

[Note: If any of the functions set forth in FAR 42.302 are to be retained by the Contracting Officer, identify those as well with the notation: "With the exception of the following contract administration functions: \_\_\_\_." Delete this notation if not required.]

(b) The following functions will be retained by the Contracting Officer or Administrative Contracting Officer (ACO) and are not re-delegable to Resident Engineers:

(1) Award of contract modifications either through supplemental agreements or change orders that exceed the ACO's appointed warrant limitations.

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- (2) Issuance of default letters.
- (3) Issuance of Cure or Show-Cause Notices.
- (4) Suspension of work letters and/or modifications.
- (5) Issuance of Contracting Officer final determination letters.
- (6) Issuance of termination notices.
- (7) Authorization of final payment.
- (c) The work will be under the direction of a Department of Veterans Affairs Contracting Officer, who may designate another VA employee to act as resident engineer at the construction site who possesses limited warranted authority.

(d) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements. Within the limits of any specific authority delegated by the Contracting Officer, the resident engineer may, by written direction, make changes in the work. The Contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(e) The Contracting Officer or an Administrative Contracting Officer identified in paragraph (a) may further delegate limited authority and specialized support services responsibilities below to the following warranted Resident Engineer personnel on site, not to exceed the dollar value and threshold of their warrant:

*[Insert name and office address of Resident Engineer with limited authority]*

(1) Conduct post-award orientation conferences.

(2) Issue administrative changes (see FAR 43.101) correcting errors or omissions, contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes.

(3) For actions not to exceed \$ *[Insert dollar amount]* negotiate and execute supplemental agreements resulting from change orders issued under the Changes clause.

(4) Negotiate and execute supplemental agreements changing contract delivery schedules where the time extension does not exceed *[Insert number]* calendar days.

(End of Clause)

[85 FR 60078, Sept. 24, 2020]

### 852.242-71 Administrative Contracting Officer.

As prescribed in 842.271, insert the following clause:

ADMINISTRATIVE CONTRACTING OFFICER (OCT 2020)

The Contracting Officer reserves the right to designate an Administrative Contracting Officer (ACO) for the purpose of performing certain tasks/duties in the administration of

the contract. Such designation will be in writing through an ACO Letter of Delegation and will identify the responsibilities and limitations of the ACO. A copy of the ACO Letter of Delegation will be furnished to the Contractor.

(End of Clause)

[85 FR 60079, Sept. 24, 2020]

### 852.243-70 Construction contract changes—Supplement.

As prescribed in 843.205-70, the Contracting Officer shall insert this clause in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold. The Contracting Officer shall fill in the number of days in which a Contractor must assert its right to an equitable adjustment; however, such amount shall not exceed 60 calendar days.

#### CONSTRUCTION CONTRACT CHANGES— SUPPLEMENT (SEP 2019)

The FAR clauses 52.236-2, Differing Site Conditions; 52.243-4, Changes; and 52.243-5, Changes and Changed Conditions, are supplemented as follows:

(a) Submission of request for equitable adjustment proposals. When directed by the Contracting Officer or requested by the Contractor, the Contractor shall, in accordance with FAR 15.403-5, submit proposals for changes in the work exceeding \$500,000 in writing to the Contracting Officer or Administrative Contracting Officer (ACO), and to the resident engineer.

(1) The Contractor must provide an itemized breakdown for changes exceeding the micro-purchase threshold (see FAR 2.101).

(2) The itemized breakdown shall include materials, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. Labor costs shall be identified with specific material placed or operation performed.

(3) Proposals shall be submitted to the Contracting Officer or ACO and the resident engineer as expeditiously as possible, but not later than *[fill-in]* calendar days, after receipt of a written change order by the Contracting Officer.

(4) Proposals shall be signed by each subcontractor participating in the change.

(5) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (a)(3) of this clause is not received within the time period specified in paragraph (a)(3), or if agreement has not been reached.

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(b) Paragraphs (a)(1) through (5) of this clause and the following paragraphs (b)(1) and (2) apply to proposals for changes in the work \$500,000 or less:

(1) As a basis for negotiation, allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. This declining scale will also be used to negotiate the prime Contractor's or upper-tier subcontractor's fee when work is performed by lower-tier subcontractors (to a maximum of three tiers) and will be based on the net increased cost to the prime or upper-tier subcontractor, as applicable. Profit (fee) shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs. Allowable percentages on changes will not exceed the following:

(i) 10 percent overhead and/or 10 percent profit (fee) on the first \$20,000.

(ii) 7.5 percent overhead and/or 7.5 percent profit (fee) on the next \$30,000.

(iii) 5 percent overhead and/or 5 percent profit (fee) on a balance over \$50,000.

(2) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (3) is not received within 30 calendar days, or if agreement has not been reached.

(c)(1) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the Contractor's overhead and/or fee percentage.

(2) Where the Contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The Contractor's fee is limited to the net increase to Contractor or subcontractors' portions of cost computed in accordance with this clause.

(3) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the Contractor if it

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had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(End of clause)

[84 FR 45683, Aug. 30, 2019]

**852.246-70 [Reserved]****852.246-71 Rejected goods.**

As prescribed in 846.370-1, insert the following clause:

**REJECTED GOODS (OCT 2018)**

(a) *Supplies and equipment.* Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the Contractor's address at the Contractor's risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the Contractor.

(b) *Perishable supplies.* The Contractor shall remove rejected perishable supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for, nor pay for, products rejected. The Contractor will be liable for costs incident to examination of rejected products.

(End of Clause)

[83 FR 48262, Sept. 24, 2018]

**852.246-72 Frozen processed foods.**

As prescribed in 846.370-2, insert the following clause:

**FROZEN PROCESSED FOODS (OCT 2018)**

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of Clause)

[83 FR 48262, Sept. 24, 2018]

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### 852.246-73 Noncompliance with packaging, packing, and/or marking requirements.

As prescribed in 846.370-3, insert the following clause:

NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS (OCT 2018)

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the Contractor, to perform the required repackaging, repacking, and/or marking services and charge the Contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the Contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of Clause)

[83 FR 48262, Sept. 24, 2018]

### 852.246-74 [Reserved]S

### 852.246-75 Warranty of construction—Guarantee period services.

As prescribed in 846.702-70(e), insert the following clause:

WARRANTY OF CONSTRUCTION—GUARANTEE PERIOD SERVICES (OCT 2018)

The clause 52.246-21, Warranty of Construction, is supplemented as follows:

Should the Contractor fail to complete the work or fail to proceed promptly to provide guarantee period services after notification by the Contracting Officer, the Government may, subject to the default clause contained at FAR 52.249-10, Default (Fixed-Price Construction), and after allowing the Contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damages to the Government resulting from the Contractor's refusal or failure to complete the work within this specified time, whether or not

the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of Clause)

[83 FR 48262, Sept. 24, 2018]

### 852.246-76 Purchase of shellfish.

As prescribed in 846.370-4 insert the following clause:

PURCHASE OF SHELLFISH (OCT 2018)

The supplier certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of Clause)

[83 FR 48262, Sept. 24, 2018]

### 852.247-70 Determining Transportation Costs for Evaluation of Offers.

As prescribed in 847.305-70, insert the following provision:

DETERMINING TRANSPORTATION COSTS FOR EVALUATION OF OFFERS (OCT 2018)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

**852.247-71**

ANTICIPATED DEMAND	
Area destination	Factor
Oakland, California .....	3
Dallas, Texas .....	2
Omaha, Nebraska .....	3
Fort Wayne, Indiana .....	4
Atlanta, Georgia .....	3
New York, New York .....	5
Total of factors .....	20

(End of Provision)

[83 FR 48262, Sept. 24, 2018]

**852.247-71 Delivery location.**

As prescribed in 847.302, insert a clause substantially as follows:

DELIVERY LOCATION (OCT 2018)

Shipment of deliverable items, other than reports, shall be to: \_\_\_\_ [Contracting Officer shall insert appropriate identifying data].

(End of Clause)

[83 FR 48263, Sept. 24, 2018]

**852.247-72 Marking deliverables.**

As prescribed in 847.305-10(a) insert a clause substantially the same as:

MARKING DELIVERABLES (OCT 2018)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: \_\_\_\_ [Contracting Officer shall insert appropriate identifying data].

(End of Clause)

[83 FR 48263, Sept. 24, 2018]

**852.247-73 Packing for domestic shipment.**

As prescribed in 847.305-10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (OCT 2018)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with regulations of carriers as applicable to the mode of transportation.

(End of Clause)

[83 FR 48263, Sept. 24, 2018]

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**852.247-74 Advance Notice of Shipment.**

As prescribed in 847.305-71(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 2018)

\_\_\_\_ [Insert number of work days] work days prior to shipping item(s)

\_\_\_\_ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to \_\_\_\_ [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of Clause)

[83 FR 48263, Sept. 24, 2018]

**852.247-75 Bills of Lading.**

As prescribed in 847.305-71(b), insert the following clause:

BILLS OF LADING (OCT 2018)

The purpose of this clause is to define when a commercial bill of lading or a Government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial bills of lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

“I certify that the shipments identified below have been made, transportation charges have been paid by \_\_\_\_ [company name], and paid freight or comparable receipts are not obtainable.

Contract or Order Number: \_\_\_\_

Destination: \_\_\_\_.”

(b) *Government bills of lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, “domestic overseas” means non-continental United States, *i.e.*, Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: \_\_\_\_ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs].

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If time is limited, requests may be by telephone: \_\_\_\_ [*Insert appropriate telephone number*]. Requests for GBLs shall include the following information.

- (i) Item identification/description.
- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional weight.
- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of Clause)

[83 FR 48263, Sept. 24, 2018]

### **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 (MAY 2020)**

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)

[85 FR 36349, June 16, 2020]

### **852.252-70 Solicitation provisions or clauses incorporated by reference.**

As prescribed in 852.102(a), insert the following provision:

#### **SOLICITATION PROVISIONS OR CLAUSES INCORPORATED BY REFERENCE (JAN 2008)**

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the Web sites provided in the provision at FAR 52.252-1, Solicitation Provisions Incorporated by Reference, or the clause at FAR 52.252-2, Clauses Incorporated by Reference. Copies may also be obtained from the contracting officer.

*[Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer.]*

(End of provision)

### **852.270-1 Representatives of contracting officers.**

As prescribed in 801.603-70(d), insert the following provision:

#### **REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)**

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally monitor the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation shall be furnished to the contractor.

(End of provision)

### **852.271-70 [Reserved]**

### **852.271-71 [Reserved]**

### **852.271-72 Time spent by counselee in counseling process.**

As prescribed in 871.212, insert the following clause:

#### **TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (APR 1984)**

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

## 852.271-73

(End of clause)

### 852.271-73 Use and publication of counseling results.

As prescribed in 871.212, insert the following clause:

#### USE AND PUBLICATION OF COUNSELING RESULTS (JAN 2008)

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of clause)

### 852.271-74 Inspection.

As prescribed in 871.212, insert the following clause:

#### INSPECTION (JAN 2008)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and examine the training facilities, the work of the veterans in training under this contract, and the records of these operations.

(End of clause)

### 852.271-75 Extension of contract period.

As prescribed in 871.212, insert the following clause:

#### EXTENSION OF CONTRACT PERIOD (APR 1984)

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of clause)

### 852.273-70 Late offers.

As prescribed in 873.110(a), insert the following provision:

#### LATE OFFERS (JAN 2003)

This provision replaces paragraph (f) of FAR provision 52.212-1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the dis-

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cretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, 852.273-70 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

### 852.273-70 Late Offers.

As prescribed in 873.110(a), insert the following provision:

#### LATE OFFERS (NOV 2021)

This provision replaces paragraph (f) of FAR provision 52.212-1, Instructions to Offerors—Commercial Items. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the Contracting Officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

### 852.273-71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

#### ALTERNATIVE NEGOTIATION TECHNIQUES (JAN 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, 852.273-71 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

### 852.273-71 Alternative Negotiation Techniques.

As prescribed in 873.110(b), insert the following provision:



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### ALTERNATIVE NEGOTIATION TECHNIQUES (NOV 2021)

The Contracting Officer may elect to use the alternative negotiation techniques described in 873.111(d) in conducting this procurement. If used, Offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

### 852.273-72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

#### ALTERNATIVE EVALUATION (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by *[Contracting officer insert description of how the information may be viewed electronically or otherwise]*. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, 852.273-72 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

### 852.273-72 Alternative Evaluation.

As prescribed in 873.110(c), insert the following provision:

#### ALTERNATIVE EVALUATION (NOV 2021)

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by *[Contracting*

*Officer insert description of how the information may be viewed electronically or otherwise]*. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible Offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

### 852.273-73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212-2, the contracting officer may insert a provision substantially as follows:

#### EVALUATION—HEALTH-CARE RESOURCES (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers: *[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]*

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without

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further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, 852.273-73 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

### 852.273-73 Evaluation—Health-Care Resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212-2, the Contracting Officer may insert a provision substantially as follows:

#### EVALUATION—HEALTH-CARE RESOURCES (NOV 2021)

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror whose proposal, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers: *[Contracting Officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the Contracting Officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The Contracting Officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]*

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s). The Government may reject any or all proposals if such action is in the Government's interest. Additionally, the Government may waive informalities and minor irregularities in proposals received.

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of a proposal, mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of

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an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received by the Contracting Officer before award.

(End of provision)

### 852.273-74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

#### AWARD WITHOUT EXCHANGES (JAN 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, 852.273-74 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

### 852.273-74 Award Without Exchanges.

As prescribed in 873.110(e), insert the following provision:

#### AWARD WITHOUT EXCHANGES (NOV 2021)

The Government intends to evaluate proposals and award a contract without exchanges with Offerors. Therefore, each initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the Contracting Officer to be necessary.

## PART 853—FORMS

Sec.

853.000 Scope of part.

### Subpart 853.1—General

853.107 Obtaining forms.

### Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

853.215 Contracting by negotiation.

853.215-70 VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.

853.236 Construction and architect-engineer contracts.

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853.236-70 VA Form 10-6298, Architect-Engineer Fee Proposal.  
853.236-71 VA Form 6298, Architect-Engineer Fee Proposal.  
853.236-72 VA Form 10101, Contractor Production Report.  
853.271 Loan Guaranty, Education and Vocational Rehabilitation and Employment Programs.  
853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).  
853.271-2 Education Programs.

### Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### 853.000 Scope of part.

This part prescribes VA forms for use in the acquisition of goods and services. It only identifies forms that are used between VA and its contractors or the general public. It does not identify forms for uses internal to VA or between VA and another Federal agency.

### Subpart 853.1—General

#### 853.107 Obtaining forms.

VA forms may be obtained online at <https://www.va.gov/vaforms/> or upon request from any VA contracting office.

[84 FR 9976, Mar. 19, 2019]

### Subpart 853.2—Prescription of Forms

#### 853.201 Federal acquisition system.

##### 853.201-1 Contracting authority and responsibilities (SF 1402).

Standard Form (SF) 1402, Certificate of Appointment, is used in accordance with FAR 1.603-3, Appointment, to appoint VA contracting officers under VA's Contracting Officer Certification Program (see 801.690-6).

#### 853.215 Contracting by negotiation.

##### 853.215-70 VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA, will be used for es-

tablishing contract nursing home care for VA beneficiaries.

#### 853.236 Construction and architect-engineer contracts.

##### 853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.

See 836.7001(a).

[84 FR 9976, Mar. 19, 2019]

##### 853.236-71 VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services).

See 836.7001(b).

[84 FR 9976, Mar. 19, 2019]

##### 853.236-72 VA Form 10101, Contractor Production Report.

See 836.7001(c).

[84 FR 9976, Mar. 19, 2019]

##### 853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.

##### 853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

#### 853.271-2 Education Programs.

To obtain education or rehabilitation services, contracting officers may use an individual written contract or VA Form 28-1905, Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status.

### Subpart 853.3—Illustration of Forms

#### 853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107. VA forms may also be available

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on the Web at *<http://www.va.gov/vaforms/>*.

## SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

### PART 870 [RESERVED]

### PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

#### Subpart 871.1—Loan Guaranty and Direct Loan Programs

Sec.

871.100 Scope of subpart.

871.101 Policy.

871.102 Authorization for repairs to properties.

871.104 Qualification of bidders.

871.106 Lien waivers.

871.107 Stipulations against liens.

#### Subpart 871.2—Vocational Rehabilitation and Employment Service

871.200 Scope of subpart.

871.201 General.

871.201-1 Requirements for the use of contracts.

871.201-2 Requirements when contracts are not required.

871.201-3 Medical services.

871.201-4 Letter contracts.

871.202 Marking and release of supplies.

871.203 Renewals or supplements to contracts.

871.204 Guaranteed payment.

871.205 Proration of charges.

871.206 Other fees and charges.

871.207 Payment of tuition or fees.

871.208 Rehabilitation facilities.

871.209 Records and reports.

871.210 Correspondence courses.

871.211 Information concerning correspondence courses.

871.212 Contract clauses.

AUTHORITY: 38 U.S.C. Chapter 31; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

#### Subpart 871.1—Loan Guaranty and Direct Loan Programs

##### 871.100 Scope of subpart.

This subpart sets forth policy and procedures with respect to the loan guaranty and direct loan programs as they pertain to property management, including the acquisition, manage-

ment, and disposition of property, real, personal, or mixed, that were secured by loans guaranteed, insured, or made under Title 38, U.S.C.

##### 871.101 Policy.

All acquisitions for the repair and maintenance of VA property acquired under 38 U.S.C. Chapter 37 must be made in accordance with FAR parts 14, 15, and 16, parts 814, 815, and 816 of this chapter, and this subpart.

##### 871.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers, VA Regional Offices, are authorized to approve a repair program for any VA property acquired under Chapter 37, Title 38, U.S.C., if the cost does not exceed \$25,000. A repair program means the aggregate amount of the proposed contracts that are contemplated in a property analysis by the Loan Guaranty activity.

(b) In cases where the expenditure is known or estimated to exceed \$25,000, the Loan Guaranty Officer, or his or her designee, must forward the request, together with the loan guaranty folder, to the Under Secretary for Benefits for approval.

(c) During the period when VA has assumed custody of the property from a holder and before its conveyance to VA under 38 CFR 36.4320, repairs not in excess of \$3,500 are authorized, when appropriate to make the property ready for sale at an earlier date than would otherwise be possible if the repair program was delayed until VA acquired absolute title. In cases where the expenditure is known or estimated to exceed \$3,500, the Loan Guaranty Officer, or his or her designee, must forward the request, together with the loan guarantee folder, to the Under Secretary for Benefits for approval.

(d) The holder must not make repairs to a property when it has continued custody, except for emergency repairs not in excess of \$500, unless the holder

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gives adequate notice to the Director, Regional Office. Emergency repairs means immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, including the initial cleanup of the property to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, when the property is assigned, to incur expenses for fuel and utilities or other recurring items that VA is required to furnish to its tenants or are required to maintain the property if the following conditions are met:

(1) Advance blanket authorization to a management broker must be limited to repairs not in excess of \$500 in any transaction.

(2) The management broker must either submit receipts with an invoice or maintain receipts for inspection.

(3) Expenditures in excess of \$500 require prior approval of the Director, Regional Office, having jurisdiction of the property.

(4) The management broker must aggregate the costs of repairs when determining whether prior approval is required.

**871.104 Qualification of bidders.**

(a) Bidders must be qualified in accordance with procedures outlined in FAR subpart 9.1 and subpart 809.1 of this chapter.

(b) Management brokers are not acceptable bidders for a repair contract due to their close association on a fee basis with VA. This restriction also applies to any contracting firm in which the management broker has an interest and in which it could be presumed that the firm would have an advantage over the other bidders. This does not preclude the management broker from performing routine recurring maintenance or minor repairs. When seeking payment for maintenance or repairs, the management broker must establish that any charges are not in excess of

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the prevailing fees for similar services in the area.

**871.106 Lien waivers.**

(a) In a contract for \$2,500 or more, the contracting officer must include the following requirements:

(1) The contractor must sign a formal release in full or a lien waiver before payment may be made.

(2) The contractor must notify the Director, Regional Office, of any subcontracts for services or materials in excess of \$2,500. Each subcontractor must sign the release or waiver jointly with the prime contractor or exercise a release or waiver in the subcontractor's own name.

(b) The contracting officer must not pay the contractor unless the release or waiver accompanies the contractor's invoice.

(c) Before any authorized partial payment, the contractor must execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver must be prepared in accordance with local law and must be in form acceptable to the District Counsel.

**871.107 Stipulations against liens.**

(a) In a contract for an amount less than \$2,500, when determined necessary by the Director, Regional Office, the contracting officer may include the following:

The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) In a contract for \$2,500 or more when there is doubt that the final responsibility of the contractor will provide maximum protection to the Government, the contracting officer must include any requirements that are available under local law. The contracting officer must obtain advice and approval of any contract stipulation or legal stipulations against liens from the District Counsel.

## Department of Veterans Affairs

## 871.201-4

### Subpart 871.2—Vocational Rehabilitation and Employment Service

#### 871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

(a) Contracts for training and rehabilitation services.

(b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31.

(c) Contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36 and 10 U.S.C. Chapters 106, 107, and 1606.

#### 871.201 General.

##### 871.201-1 Requirements for the use of contracts.

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

(a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses*. Special services or courses are those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting offi-

cer considers to be necessary for the rehabilitation of the trainee.

[73 FR 2717, Jan. 15, 2008, as amended at 83 FR 46418, Sept. 13, 2018]

##### 871.201-2 Requirements when contracts are not required.

(a) For the purpose of this section a contract is not required when all tuition, fees, and charges for books, supplies, or services necessary to train or educate an eligible veteran under 38 U.S.C. Chapter 31 are published in the school catalog or other published document.

(b) When a contract is not required, the Vocational Rehabilitation and Employment Officer must obtain a signed statement of charges from the educational institution or training establishment for courses to be offered, including the rate of tuition, fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy, and other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 28-1905, Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification Status, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those charges nonveterans pay or that are published in the school catalog or other published document.

##### 871.201-3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements, or arrangements are separate and distinct from any other medical service under the jurisdiction of the Veterans Health Administration to which the veteran may be entitled. No certificate of eligibility is required from the Veterans Health Administration before the veteran may be provided such services.

##### 871.201-4 Letter contracts.

Letter contracts are authorized for use in accordance with the provision of FAR 16.603 and in those cases in which it is not possible to complete a formal contract with an approved educational

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institution before the enrollment of eligible veterans for training.

### **871.202 Marking and release of supplies.**

The educational institution or training establishment is not required to mark supplies to indicate ownership by the United States. Supplies are considered to be the property of the trainee at the time they are furnished.

### **871.203 Renewals or supplements to contracts.**

Except for contracts for educational and vocational counseling, the contracting office may renew contracts from year to year by completing a renewal agreement no later than 30 days before the expiration of the contract. There must be no change in the schedule of provisions in the original contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of the supplemental agreement.

(b) Contracts for educational and vocational counseling may provide for automatic extension from year to year.

### **871.204 Guaranteed payment.**

A contracting officer may not award a contract or agreement to any institution or training establishment that requires VA is to pay a minimum charge, or to enroll a minimum number of participants per quarter, semester, term, course, or other period.

### **871.205 Proration of charges.**

A contract must include the exact formula agreed on for the proration of charges in the event that the veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

### **871.206 Other fees and charges.**

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment

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during a period in which the veteran is a chapter 31 participant, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with Part 813.

### **871.207 Payment of tuition or fees.**

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as a registration fee, etc.

(d) The period for which payment of charges may be made is the period of



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actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

### **871.208 Rehabilitation facilities.**

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

### **871.209 Records and reports.**

Contracts, agreements, or arrangements must provide for the number and frequency of reports, adequate financial records to support payment for each trainee, and maintenance of attendance and progress records. Such records must be preserved for a period of three years.

### **871.210 Correspondence courses.**

Contracts with institutions for correspondence courses must provide for the following:

(a) Major changes in courses or course material are not binding on the VA until a supplemental agreement to the contract is negotiated.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material, such as revision of text, the substitution of a newer lesson for an older

one, or the substitution of equipment of equal or greater value, are permitted without supplemental agreements. The institution must place such minor changes and revisions on file with the contracting officer at the time of the change or revision.

(c) Trainees must be provided with prompt and adequate lessons service and, unless otherwise specified in the contract, must be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled non-veteran students.

(d) All lessons must be adequately serviced on an individual basis. Grouping of lessons into units or partial servicing does not meet this requirement.

(e) Each lesson must have a separate examination that is adequate in terms of lesson content.

(f) The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training veterans must not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under 38 U.S.C. Chapter 31 and must not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges must not be in excess of those charged non-veterans.

(h) Payment must be made on a lesson-completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment must be made only once for each lesson even though it is necessary to service a lesson more than once.

### **871.211 Information concerning correspondence courses.**

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in VA contracts may be directed to the institutions offering the courses.

### **871.212 Contract clauses.**

(a) Contracting officers shall use the following clauses, as appropriate, in solicitations and contracts for vocational

rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

(1) 852.271–72, Time Spent by Counselee in Counseling Process.

(2) 852.271–73, Use and Publication of Counseling Results.

(3) 852.271–74, Inspection.

(4) 852.271–75, Extension of Contract Period.

(b) See 837.110–70(a) for clause 852.237–74, Non-Discrimination in Service Delivery.

[84 FR 46457, Sept. 4, 2019]

## PART 872 [RESERVED]

## PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES (Eff. until 11-1-21)

Sec.

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AUTHORITY: 38 U.S.C. 501 and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

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EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, part 873 was revised, effective Nov. 1, 2021. For the convenience of the user, the revised text follows this part.

### 873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of

commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of the VAAR. However, when a policy or procedure in the FAR or another part of the VAAR differs from the procedures contained in this part, this part shall apply. These procedures contain more flexibility than provided in the FAR or elsewhere in the VAAR. (38 U.S.C. 8153)

### 873.102 Definitions.

*Commercial service* means a service, except construction exceeding \$2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

*Health-care providers* include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

*Health-care resource* includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space. (38 U.S.C. 8153)

### 873.103 Priority sources.

Without regard to FAR 8.002(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR Subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. (38 U.S.C. 8153)

### 873.104 Competition requirements.

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with

affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis. (38 U.S.C. 8153)

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required. (38 U.S.C. 8153)

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted. (38 U.S.C. 8153)

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6. (38 U.S.C. 8153)

#### **873.105 Acquisition planning.**

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified ac-

quisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service. (38 U.S.C. 8153)

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108. (38 U.S.C. 8153)

(d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes—summarizing decisions, actions, and conclusions—shall be prepared and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

#### **873.106 Presolicitation exchanges with industry.**

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement

through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft requests for proposals (RFPs);

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (e.g., Internet); and

(11) Use of the Central Contractor Registration (CCR). (<http://www.bpn.gov/ccrinq/scripts/search.asp>) and the "Advanced Search" feature on VetBiz Vendor Information Pages ([http://vip.vetbiz.gov/general\\_user/search/default.asp](http://vip.vetbiz.gov/general_user/search/default.asp)) to search for vendors. (38 U.S.C. 8153).

#### 873.107 Socioeconomic programs.

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR

13.003(b)(1), 19.502-2, and 19.502-3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) *Rejecting Small Business Administration (SBA) recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless the contracting officer makes a determination in writing that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding \$5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding \$5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the DSPE, whose decisions shall be final. (38 U.S.C. 8153)

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

**873.108 Publicizing contract actions.**

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR Part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification

requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873. (38 U.S.C. 8153)

**873.109 General requirements for acquisition of health-care resources.**

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873. (38 U.S.C. 8153)

(b) *Statement of work/Specifications.* Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing

restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Without regard to FAR 14.404-1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government. (38 U.S.C. 8153)

#### **873.110 Solicitation provisions.**

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273-70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at 852.273-72, Alternative evaluation, in lieu of the provision at 52.212-2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212-2. (38 U.S.C. 8153)

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273-74, Award without exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at 52.207-3, Right of First Refusal of Employment, and the clause at 852.207-70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

#### **873.111 Acquisition strategies for health-care resources.**

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning.

The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR Part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding.* FAR Part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* If the procedures of FAR Parts 12, 13, and 15 differ from the procedures of this Part, the procedures of this Part shall take precedence. (38 U.S.C. 8153)

(d) *Multiphase acquisition technique.* (1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as ap-

propriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition. (38 U.S.C. 8153)

(e) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other

factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104). (38 U.S.C. 8153)

#### **873.112 Evaluation information.**

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a

solicitation must be set forth therein. (38 U.S.C. 8153)

#### **873.113 Exchanges with offerors.**

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror



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in accordance with FAR parts 3 and 24. (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

### **873.114 Best value pool.**

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for

award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

### **873.115 Proposal revisions.**

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

### **873.116 Source selection decision.**

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if

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the contracting officer requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with FAR 15.308.

### 873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

### 873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506. (38 U.S.C. 8153)

EFFECTIVE DATE NOTE: At 86 FR 54118, Sept. 30, 2021, part 873 was revised, effective

## 48 CFR Ch. 8 (10–1–21 Edition)

Nov. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

### PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES (Eff. 11-1-21)

Sec.

- 873.101 Policy.
- 873.102 Definitions.
- 873.103 Priority sources.
- 873.104 Competition requirements.
- 873.105 Acquisition planning.
- 873.106 Exchanges with industry before receipt of proposals.
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- 873.109 General requirements for acquisition of health-care resources.
- 873.110 Solicitation provisions.
- 873.111 Acquisition strategies for health-care resources.
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- 873.113 Exchanges with offerors.
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- 873.115 Proposal revisions.
- 873.116 Source selection decision.
- 873.117 Award to successful offeror.
- 873.118 Debriefings.

AUTHORITY: 38 U.S.C. 8127–8128; 38 U.S.C. 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.

#### 873.101 Policy.

(a) *General.* In accordance with 38 U.S.C. 8153, to secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the Department of Veterans Affairs (VA) may make arrangements by contract for the mutual use, or exchange of use, of health-care resources between VA health-care facilities and any health-care provider, or other entity or individual. This part prescribes simplified procedures for contracts with entities not affiliated with VA under 38 U.S.C. 7302 to secure health-care resources that are a commercial service, or the use of medical equipment or space. VA may enter into such a contract if such resources are not, or would not be, used to their maximum effective capacity. (38 U.S.C. 8153)

(b) *Precedence.* The procedures in this part shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of the VA Acquisition Regulation (VAAR). However, when a policy or procedure in the FAR or another part of the VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. (38 U.S.C. 8153)

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### 873.102 Definitions.

*Commercial service* means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

*Health-care providers* include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

*Health-care resource* includes hospital care and medical services (as those terms are defined in 38 U.S.C. 1701 and services under 38 U.S.C. 1782 and 1783) any other health-care service, and any health-care support or administrative resource. (38 U.S.C. 8153)

### 873.103 Priority sources.

Except for the acquisition of covered services available from the Committee for Purchase From People Who Are Blind or Severely Disabled and the AbilityOne Program (see FAR subpart 8.7), there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space in accordance with 808.002(a)(2) and 873.107. (38 U.S.C. 8153)

### 873.104 Competition requirements.

(a) *Affiliated institutions.* (1) A health-care resource may be acquired on a sole source basis if a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the VA in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers. (38 U.S.C. 8153(a)(3)(A))

(2) Acquisitions of health-care resources identified in paragraph (a)(1) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101.

(b) *Non-affiliated entities.* (1) If the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a)(1) of this section, contracting officers shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation for the resource to be procured, and provide for the consideration by VA of bids, proposals, or quotations so submitted. (38 U.S.C. 8153(a)(3)(B))

(2) Acquisition of health-care resources identified in paragraph (b)(1) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (b)(1) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in FAR 6.303. (38 U.S.C. 8153(a)(3)(D))

### 873.105 Acquisition planning.

(a) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher-level designee. At a minimum, the team must include the contracting officer and a representative of the Office of General Counsel and the requesting service. (38 U.S.C. 8153)

(b) The contracting officer or the acquisition team, as appropriate, must conduct market research, including satisfying the requirements of 808.002(a)(2) and 873.107, Socio-economic programs, and a VA Rule of Two determination (819.502-2). It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.107. (38 U.S.C. 8153)

(c) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes—summarizing decisions, actions, and conclusions—shall be prepared and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

### 873.106 Exchanges with industry before receipt of proposals.

(a) Exchange of information among all interested parties involved in an acquisition described in 873.104(b), from the earliest identification of a requirement through release of the solicitation, is encouraged. Any exchange of information must be consistent with procurement integrity requirements in FAR 3.104. The nature and extent of exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

- (2) Public hearings;
- (3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;
- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft requests for proposals (RFPs);
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (e.g., internet);
- (11) Use of the System for Award Management (SAM) (*see* <http://www.sam.gov>); and
- (12) Researching VA's Vendor Information Pages (VIP) database at <https://www.vip.vetbiz.va.gov/>.

#### **873.107 Socioeconomic programs.**

(a) The Veterans First Contracting Program in VAAR subpart 819.70 takes precedence over other small business programs. (38 U.S.C. 8127–8128)

(b)(1) Except for contract actions subject to 808.002(a)(2), competitive contract actions not otherwise excluded under this part shall be set-aside for VIP-listed service-disabled veteran-owned small business (SDVOSB) concerns or veteran-owned small business (VOSB) concerns if the contracting officer has a reasonable expectation that two or more eligible small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127–8128)

(2) The contracting officer shall proceed with the acquisition under the simplified procedures of this part considering priority sources (*see* 808.008(a)(2) and 873.103) and preferences for other small businesses in accordance with 819.203–70 and 819.7004. (38 U.S.C. 8153)

(c) Without regard to FAR 13.003(b)(1), 19.203, 19.502, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(d) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by 38 U.S.C. 8127 and 8128, as implemented in VAAR subpart 819.70, the Veterans First Contracting Program. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small business concerns in accordance with FAR 19.203, 819.203–70, and 819.7004. (38 U.S.C. 8153)

#### **873.108 Publicizing contract actions.**

(a) All competitive acquisitions under this part, except as provided in paragraph (b) of this section, for dollar amounts in excess of the SAT, shall be publicly announced utilizing a medium designed to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Notice shall be published for a reasonable time prior to issuance of a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the request for quotation (RFQ) or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions described in 873.104(a). However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from an institution not affiliated with the VA in accordance with 38 U.S.C. 7302, if conducted on a sole source basis, must still be justified and publicized (*see* 873.104(b)(2)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under the procedures in this part must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part. (38 U.S.C. 8153)

#### **873.109 General requirements for acquisition of health-care resources.**

(a) *Source selection authority.* Unless the head of the contracting activity (HCA) appoints another individual to serve as the Source Selection Authority (SSA), the contracting officer shall be the SSA for acquisitions of health-care resources, consisting of commercial services, or the use of medical equipment or space, utilizing the guidance contained in this part. (38 U.S.C. 8153)

(b) *Performance work statement/statement of work.* The performance work statement

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(PWS) or statement of work (SOW) must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socioeconomic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include—

(1) A brief written description of the procedures used in awarding the contract;

(2) A written determination that the health-care resources being procured are not otherwise feasibly available or that utilization of such health-care resources is necessary to meet mission requirements;

(3) Documentation of market research and the results of such research;

(4) The number of offers received; and

(5) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in the solicitations.

(2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(d)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government and a memorandum for the record is included in the solicitation file explaining the reasons for the cancellation. (38 U.S.C. 8153)

### 873.110 Solicitation provisions.

(a) As required in 873.109(d), contracting officers shall set a reasonable time for receipt of quotations or proposals and shall insert the provision at 852.273-70, Late Offers, in all RFQs and RFPs exceeding the micro-purchase threshold. However, this provision shall not be used if the provision 852.273-71, Alternative Negotiation Techniques, is to be used. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative Negotiation Techniques, when either of the alternative negotiation techniques described in 873.111(d)(1) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at 852.273-72, Alternative Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(d)(1)(ii) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under a RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—Health-Care Resources, in the RFQ or RFP in lieu of FAR provision 52.212-2. (38 U.S.C. 8153)

(e) As provided at 873.113(f), if award may be made without exchange with offerors, the contracting officer shall include the provision at 852.273-74, Award Without Exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at 52.207-3, Right of First Refusal of Employment, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

### 873.111 Acquisition strategies for health-care resources.

The following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations (RFQ).* (1) Without regard to FAR subparts 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made. (see FAR 13.004)

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Multiphase acquisition technique—(1) General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror. (38 U.S.C. 8153)

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph. (38 U.S.C. 8153)

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information). (38 U.S.C. 8153)

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision. (38 U.S.C. 8153)

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request

proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision. (38 U.S.C. 8153)

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors whose proposals are not accepted under a competitive request for proposals (RFP) as required by 873.118. (38 U.S.C. 8153)

(d) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104). (38 U.S.C. 8153)

#### **873.112 Evaluation information.**

(a) Without regard to FAR 15.304, Evaluation factors and significant subfactors (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

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(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)

### **873.113 Exchanges with offerors.**

(a) Without regard to FAR 15.201 or 15.306, acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions are not applicable to acquisitions under this part. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, omissions, or deficiencies) in an Offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in 873.111(d)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24. (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

### **873.114 Best value pool.**

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool.

This determination is within the sole discretion of the contracting officer. Competitive range determinations are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

### **873.115 Proposal revisions.**

(a) The contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers n. In any case, contracting officers and acquisition team members must safeguard all proposals and revisions to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

**873.116 Source selection decision.**

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The SSA shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and sub-factors in the solicitation, and that the prices are fair and reasonable. The SSA may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the SSA requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with FAR 15.308. (38 U.S.C. 8153)

**873.117 Award to successful offeror.**

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a sec-

ond time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

**873.118 Debriefings.**

Offerors whose proposals are not accepted under a competitive request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506. (38 U.S.C. 8153)

**PARTS 874–899 [RESERVED]**