

the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first \$20,000; 7-1/2 percent fee on the next \$30,000; and 5 percent fee on balance over \$50,000.

(6) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(7) 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 of subcontractors' portions cost computed in accordance herewith.

(8) 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 he/she 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.

(9) Cost of Federal Old Age Benefit (Social Security) tax and of Worker's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractors' proposals.

(10) 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 therefore. 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.

(11) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of clause)

#### 852.236-89 Buy American Act.

As prescribed in Table 825.1102, insert the following clause:

#### BUY AMERICAN ACT (JAN 2008)

(a) Reference is made to the clause entitled "Buy American Act—Construction Materials," FAR 52.225-9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) it was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with Subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of clause)

*Alternate I* (JAN 2008). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Construction Materials under Trade Agreements," FAR 52.225-11.

(b) The restrictions contained in this clause 852.236-89 are waived for designated country construction material as defined in FAR 52.225-11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-11, VA does not anticipate accepting an offer that includes foreign construction material, other than designated country construction material.

*Alternate II* (JAN 2008). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Construction Materials

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under Trade Agreements,” FAR 52.225-11 and its Alternate I.

(b) The restrictions contained in this clause 852.236-89 are waived for World Trade Organization (WTO) Government Procurement Agreement (GPA) country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, as defined in FAR 52.225-11 and its Alternate I. Notwithstanding a bidder’s right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-11, VA does not anticipate accepting an offer that includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

**852.236-90 Restriction on submission and use of equal products.**

As prescribed in 836.202(c), the following clause shall be included in the solicitation if it is determined that only one product will meet the Government’s minimum needs and the Department of Veterans Affairs will not allow the submission of “equal” products:

RESTRICTION ON SUBMISSION AND USE OF  
EQUAL PRODUCTS (NOV 1986)

The clause applies to the following items:

Notwithstanding the “Material and Workmanship” clause of this contract, FAR 52.236-5(a), nor any other contractual provision, “equal” products will not be considered by the Department of Veterans Affairs and may not be used.

(End of clause)

**852.236-91 Special notes.**

As prescribed in 836.579, insert the following clause:

SPECIAL NOTES (JUL 2002)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration, or repair of buildings, structures, and communications facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

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(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder’s previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted, the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers’ methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their intended use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10-year average, the excess experienced shall be considered “unusually severe.” Comparison shall be on a monthly basis. Whether or not unusually severe weather in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of clause)

**852.237-7 Indemnification and medical liability insurance.**

As prescribed in 837.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY  
INSURANCE (JAN 2008)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation