

**DEPARTMENT OF VETERANS AFFAIRS****48 CFR Parts 801, 825, 832, 836, 846, and 852**

RIN 2900-AJ56

**VA Acquisition Regulation: Construction and Architect-Engineer Contracts****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs Acquisition Regulation (VAAR). We propose to update position titles, to make minor grammatical corrections and revisions, to revise and update section numbers and titles, to relocate material to correspond to the Federal Acquisition Regulation (FAR), and to delegate authority. In addition, we propose to update regulations on Construction and Architect-Engineer Contracts and on Solicitation Provisions and Contract Clauses, and to add coverage regarding the authority of the National Cemetery Administration to award architect-engineer contracts. Also, we propose to replace a general prescription directing the use of all VAAR clauses relating to construction contracts with specific prescriptions for each clause, remove obsolete or duplicative material, update the VAAR regarding the requirement for certificates of current cost or pricing data, and provide agency procedures regarding disclosure of the Government cost estimate on construction contracts. This document would also remove a "guarantee" clause from the VAAR and provide agency procedures for VA contracting officers to use the FAR "warranty" clause for construction contracts exceeding the micro-purchase threshold in order to protect the best interests of the Government. In addition, this document would revise provisions regarding the acceptance of foreign construction materials to correspond to changes made in the FAR and to comply with the North American Free Trade Agreement and the Trade Agreements Act.

**DATES:** Comments on the proposed rule should be submitted on or before November 26, 2001 to be considered in the formulation of the final rule.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments

to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900-AJ56." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Don Kaliher, Acquisition Program Management Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 273-8819.

**SUPPLEMENTARY INFORMATION:** The Federal Acquisition Regulation (FAR) contains prescriptions for the use of clauses in the applicable related FAR part. It contains the actual clauses in one part, part 52. Consistent with this organization of the FAR, the prescription for the use of the FAR clause at 52.236-26, Preconstruction Conference, is located in FAR part 36, which deals with construction. Although the Department of Veterans Affairs Acquisition Regulation (VAAR) contains all clauses in one part, part 852, it currently does not, in most cases, follow the organization used in the FAR regarding the location of the prescriptions. This document proposes to reorganize the VAAR to correspond to the organization of the FAR by relocating the existing prescriptions or placing the new proposed prescriptions in the appropriate parts of the VAAR.

The VAAR currently contains a general prescription at 852.236-70, Clauses and provisions for fixed-price construction contracts, which requires the contracting officer to include the construction-related clauses in the VAAR in all construction solicitations and contracts, regardless of dollar value. In addition, a few of the clauses in the VAAR have their own individual prescriptions. This document proposes, as set forth below, to remove the general prescription that applies to all construction-related clauses in the VAAR and, for each clause that does not currently have an individual prescription, to provide an individual prescription to specify when the clause is to be used.

The general prescription at 852.236-70 requires the contracting officer to include the following clauses in all solicitations and contracts for construction, regardless of dollar value:

- 852.236-76, Correspondence.
- 852.236-77, Reference to "standards."
- 852.236-78, Government supervision.
- 852.236-80, Subcontracts and work coordination.

- 852.236-84, Schedule of work progress.
- 852.236-85, Supplementary labor standard provisions.
- 852.236-86, Worker's compensation.
- 852.236-88, Contract changes—supplement.
- 852.236-91, Special notes.

This document proposes to require use of these clauses only if the solicitation or contract is expected to exceed the micro-purchase threshold (currently \$2,000 for construction) rather than in all solicitations and contracts, regardless of dollar value, as is currently required by the VAAR. The FAR does not require the use of any clauses in contracts below the micro-purchase threshold and this change would correspond to the FAR.

The general prescription at 852.236-70 also requires the contracting officer to include the clause at 852.236-79, Daily report of workers and materials, in all solicitations and contracts for construction, regardless of dollar value. This document proposes to require use of this clause only if the solicitation or contract is expected to exceed the simplified acquisition threshold (currently \$100,000) rather than in all solicitations and contracts as is currently required by the VAAR. Use of this clause in lesser dollar value contracts would be optional on the part of the contracting officer, when determined to be in the best interest of the Government. This clause requires information from the contractor that appears critical to the proper administration of more complicated, larger dollar value contracts, but may not be necessary on smaller, less complicated projects.

The general prescription at 852.236-70 further requires the contracting officer to include the following clauses in all solicitations and contracts for construction, regardless of dollar value:

- 852.236-71, Specifications and drawings for construction.
- 852.236-72, Performance of work by the contractor.
- 852.236-74, Inspection of construction.
- 852.236-82, Payment under fixed-price construction contracts (without NAS).
- 852.236-83, Payment under fixed-price construction contracts (including NAS).

This document proposes to require use of these clauses only if the solicitation or contract includes the FAR clauses that these clauses supplement rather than in all solicitations and contracts. Since these clauses supplement particular FAR clauses, we believe there is no reason to include them in the solicitation or contract if the solicitation or contract does not also include the applicable FAR clauses.

FAR 36.203(c) states that the overall amount of the Government's construction cost estimate shall not be disclosed except as permitted by agency regulations. The VAAR does not currently contain regulations addressing this issue. We propose to add regulations at section 836.203 providing that the overall amount of the Government's construction cost estimate shall not be disclosed until after contract award and then may be disclosed upon request. We believe this would ensure that release of this sensitive information does not inappropriately influence the outcome of the solicitation prior to award.

The FAR at section 36.208 delegates to the head of the contracting activity the authority to authorize the use of cost-plus-fixed-fee, price-incentive, or other cost-variation type contracts concurrently with firm-fixed-price contracts. Section 836.208 of the VAAR currently restricts such authority to the Chief Facilities Management Officer or the Under Secretary for Health. We know of no reason for VA to be more restrictive than the FAR in delegating this authority. This document proposes to remove section 836.208 of the VAAR, thereby making the FAR delegation of authority applicable to VA.

FAR section 36.209 requires the approval of the head of the agency or authorized representative before a contract for construction can be awarded to the architect-engineer firm that designed the project. The FAR does not specify whether section 36.209 applies to both design-bid-build projects and design-build projects, as defined at FAR 36.102, or only to design-bid-build projects. A design-bid-build project is one where the design and construction are sequential and are contracted for separately with two contracts, one to design the project and the other to build the project, normally with two separate and independent contractors. A design-build project is one where both the design and construction work are combined in a single contract with one contractor. We believe a requirement for approval to award a design-build contract, where a single contractor both designs and builds a project, is not necessary. Thus, this document proposes to add a statement to section 836.209 to clarify that the provisions of FAR 36.209 and this section are applicable only to design-bid-build projects, not to design-build projects.

The FAR at 36.602-3 states that, when acquiring architect-engineer (A/E) services, agencies shall provide for one or more A/E evaluation boards. The VAAR currently delegates authority to, and provides procedures for the

establishment of A/E evaluation boards by, the Office of Facilities Management (OFM) and VA medical facilities. This document proposes to delegate the same authority to the National Cemetery Administration (NCA). This is necessary to clarify that NCA has the same authority to acquire A/E services as does OFM and VA medical facilities.

FAR 36.211 states that advance notices and solicitations should be distributed to reach as many prospective offerors as practicable and provides other guidance to contracting officers on how to accomplish this. Section 836.211 of the VAAR currently authorizes the VA Central Office Project Manager to determine how VA Central Office construction specifications will be distributed. We believe there is no need for VA to have a separate section covering distribution of advance notices and solicitations applicable only to Central Office. Therefore, we propose to remove section 836.211. Upon removal of this section, VA Central Office would follow the FAR regarding the distribution of specifications.

Section 836.213-4, Notice of award, is proposed to be added to specify when a notice of award (letter of acceptance) is required on a construction contract. The FAR specifies that the contracting officer shall make award by written notice when using sealed bid procedures (FAR 14.408-1(a)) and by furnishing the executed contract or other notice of award when using negotiated procedures (FAR 15.504). The FAR does not specify the method of notice when using the simplified procedures of FAR part 13. This document proposes to require the contracting officer to issue a notice of award (letter of acceptance) for any contract award in excess of \$25,000. Contracts in excess of \$25,000 require either payment protection (contracts greater than \$25,000 but not greater than \$100,000) or payment and performance bonds (contracts of \$100,000 or more). The FAR at 36.213-4 requires the contracting officer to provide certain information to the contractor when a notice of award is issued, including information on bonds. We believe that use of a letter of acceptance is the best way to provide that information to the contractor, including information on the requirement for either payment protection or bonds.

Section 836.371 of the VAAR currently contains guidance on the "notice to proceed," the letter that is sent to contractors on construction contracts establishing the start date for contract work. Section 836.371 currently requires the contracting officer to send the "notice to proceed" by

certified mail, return receipt requested, in order to provide proof of delivery. Other methods of delivery, such as overnight package delivery services, provide proof of delivery and may be less expensive or less administratively burdensome than certified mail. This document proposes to renumber this section as 836.213-70 and to revise the section to allow the contracting officer to use any delivery method that would provide proof of delivery. We believe this would reduce the cost and administrative burden of sending the "notice to proceed."

The introductory text in section 852.236-88 currently requires that all proposed construction contract changes costing between \$100,000 and \$500,000 shall be accompanied by certificates of current cost or pricing data. This document proposes to relocate this introductory text to section 836.578 and to revise the text to require certificates of current cost or pricing data only if the proposed change exceeds \$500,000. The FAR threshold for requiring certificates of current cost or pricing data is \$500,000 and this proposed change appears necessary to ensure that the VAAR corresponds to the FAR requirements.

Paragraph (b) of section 836.602-2 currently provides that the head of the contracting activity (HCA) or alternate shall serve on architect-engineer (A/E) evaluation boards at VA field facilities. Due to reorganization, not all VA field facilities have an HCA on site. Therefore, this document proposes to revise 836.602-2(b) to allow the senior contracting officer to serve on the board if an on-site HCA is not present. We believe this would ensure that a local representative with contracting experience and authority is available to serve on the board in the event that an HCA is not available.

The FAR states that, when authorized by the agency, the short selection procedures of FAR 36.602-5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold. Although the VAAR currently authorizes the use of the short selection procedures, it also requires the approval of specified VA officials before those procedures may be used. This document proposes to remove the approval requirements and to simply authorize the use of the short selection procedures. We believe this will simplify the acquisition process and will remove an unnecessary administrative burden.

The FAR at 36.603(c) provides that, under the direction of the parent agency, A/E evaluation boards shall

maintain an A/E qualifications file. We propose to add section 836.603 to provide that the Chief Facilities Management Officer for VA Central Office, or the Chief, Engineering Service, for field facilities, shall be responsible for maintaining this file.

The FAR at 46.710 authorizes agencies to use the FAR clause at 52.246–21, Warranty for Construction, if use of a warranty clause has been approved under agency procedures. The VAAR does not currently contain agency procedures for use of the FAR warranty clause. Instead, the VAAR contains a “Guaranty” clause at 852.236–75 that is similar to the FAR clause at 52.246–21. This document proposes to delete the VAAR Guaranty clause, with the exception of paragraph (f) and Supplement I of that clause, and to provide agency procedures authorizing contracting officers to use the FAR clause in construction solicitations and contracts exceeding the micro-purchase threshold. We believe this proposed change would ensure that all VA construction contracts exceeding the micro-purchase threshold contain a warranty provision to protect the best interests of the Government.

Paragraph (f) of the current VAAR clause at 852.236–75, Guaranty, provides VA with additional protections not found in the FAR clause at 52.246–21, Warranty of Construction. Paragraph (f) provides that any special guaranties required under the contract are subject to the same elections set forth in the basic guaranty/warranty clause. This document proposes to retain this paragraph and to relocate the paragraph (as a new clause) to new section 852.246–1, Special warranties. This document also proposes to add a prescription for use of this new clause at 846.710–70 providing that contracting officers shall include the new clause in contracts as a supplement to the FAR clause at 52.246–21, Warranties. We believe this would ensure that this additional protection regarding special warranties, currently provided by the VAAR as paragraph (f) of 852.236–75, Guaranty, is continued, despite the proposed deletion of clause 852.236–75.

The VAAR currently contains, as part of the Guaranty clause at 852.236–75, a supplemental paragraph (Supplement I) for use in construction contracts that include guarantee period services. This supplemental paragraph provides remedies for the Government in the event that the contractor fails to furnish the guarantee period services. The FAR does not contain provisions addressing guarantee period services. This document proposes to renumber and keep this supplemental paragraph as

new section 852.246–2, Warranty for construction—guarantee period services, to revise the paragraph to make it a supplement of the FAR clause at 52.246–21, Warranty for Construction, and to add a prescription for its use at new section 846.710–71. We believe this would ensure that the VAAR retains an appropriate warranty clause addressing guarantee period services and a prescription for use of that clause.

For a number of clauses currently in the VAAR, the VAAR states, in the introductory text of the respective sections, that the clauses supplement FAR clauses. This document proposes to move these introductory text statements to the bodies of the VAAR clauses to ensure that the statements are part of those clauses. This would ensure that contracts in which these clauses appear clearly state that these clauses supplement the applicable FAR clauses.

The VAAR currently contains a number of clause alternates/supplements that are to be used with the respective clauses under the specified circumstances. This document proposes to revise the method used in the VAAR to identify alternates to match the method used in the FAR. For instance, the introductory text for the clause at 836.236–81, Work coordination (alternate provision), states that the clause may be substituted for paragraph (b) of the clause at 852.236–80, Subcontracts and work coordination. In other words, it is an alternate for the clause at 852.236–80. We proposed to delete section number 852.236–81 and revise the introductory text to clarify that the currently existing material at 852.236–81 is Alternate I to the clause at 852.236–80. We propose similar changes to the other alternates and supplements in the VAAR to match the way alternates are used in the FAR.

The VAAR currently contains a prescription for the use of the clause at 852.236–89, Buy American Act, in the introductory text of that section. This document proposes to revise the prescription and relocate it to part 825, Foreign Acquisition. Since the clause concerns the Buy American Act (BAA) and foreign acquisition, the prescription is more appropriately located in that part of the VAAR.

In addition, this document proposes to revise the prescription to the clause at 852.236–89, Buy American Act, and to revise the clause to correspond to changes in the FAR. Part 825 of the FAR was recently revised to make accommodations for the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA). In doing so, an old FAR clause, 52.225–5, Buy American Act—

Construction Materials, was deleted and two new clauses were created, 52.225–9, Buy American Act—Balance of Payment Program—Construction Materials, and 52.225–11, Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements. The VAAR clause at 852.236–89 currently references the old deleted FAR clause 52.225–5 and does not take into consideration the impact of NAFTA or TAA. This document proposes to revise the prescription for the use of the clause at 852.236–89 and to revise the clause to accommodate NAFTA and TAA. As currently written, the clause places extensive limitations on the acceptance of any foreign material on a VA construction project, regardless of the country of origin. Thus, the clause conflicts with NAFTA and TAA, which provide that, over certain dollar thresholds, construction materials from NAFTA or TAA designated countries will be exempt from BAA restrictions. This document proposes to add two alternate provisions for use with the VAAR clause at 852.236–89 to correspond to the changes made in the FAR and to ensure compliance with NAFTA and TAA. In addition, this document proposes to remove a delegation of authority reserved to the Secretary to approve determinations to accept foreign construction material and to instead follow the delegations of authority contained in the FAR at 25.202.

The clause at 852.236–91, Special notes, currently requires a bidder to certify its business status and to certify that it will furnish data on its business if so requested. The Clinger-Cohen Act of 1996 precludes agencies from requiring certifications in agency procurement regulations except those required by law or as approved by the head of the agency. This document proposes to remove the certification requirement in 852.236–91 and to change paragraph (a) of the clause to be a “representation” by the bidder. This proposed change is consistent with similar language used in the FAR, such as in FAR clause 52.219–19. The information attested to in this clause is considered important and VA’s ability to require bidders to furnish business data is considered essential to the evaluation of the bidders’ responsibility. By changing from a “certification” to a “representation,” VA will still be able to collect the needed information and will be in compliance with the Clinger-Cohen Act.

#### Miscellaneous Changes

This document proposes to make new delegations of authority, to revise and

update section numbers and titles, to update position titles, to make minor grammatical and other corrections and revisions, and to relocate material, all to correspond to the FAR. This document would also remove obsolete or duplicative material and make non-substantive clarifying changes.

This document proposes to revise section 801.301-70, paragraph (c), to clarify which Office of Management and Budget (OMB) Paperwork Reduction Act (PRA) Control Numbers are assigned to which clauses. VAAR clause 852.236-81 is currently assigned OMB Control No. 2900-0422. This document proposes to rename section 852.236-81 as "Alternate I" under section 852.236-80. Therefore, this document proposes to remove the reference to 852.236-81 from section 801.301-70, paragraph (c), and replace it with a reference to 852.236-80 (Alt. I).

This document proposes to obtain specific OMB PRA Control Numbers for the following clauses, shown below in full text:

#### **Buy American Act (00/2001)**

(a) Reference is made to the clause entitled "Buy American Act—Balance of Payments Program—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 (00/2001).* As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

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

(b) The restrictions contained in this clause 852.236-89 are waived for North American Free Trade Agreement (NAFTA) 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 NAFTA country construction material.

*Alternate II (00/2001).* As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

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

(b) The restrictions contained in this clause 852.236-89 are waived for designated country and North American Free Trade Agreement (NAFTA) 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 or NAFTA country construction material.

#### **852.236-91, Special Notes (00/2001)**

(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, 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

(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 product systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their 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)

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), collections of information are contained in clauses 852.236-89, Buy American Act, and 852.236-91, Special Notes, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. These are existing clauses and the

paperwork requirements were previously included in VA's approved, but now expired, Paperwork Reduction Act request covering all acquisition activities under parts 813, 814, and 815 of the VAAR. This notice is to obtain specific Office of Management and Budget (OMB) control numbers for these specific clauses. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to OMB for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AJ56."

*Title and Provision/Clause Number:* Clause at 852.236-89, Buy American Act.

*Summary of collection of information:* This clause is used in solicitations and contracts for construction that also contain the FAR clause at 52.225-9, Buy American Act—Balance of Payment Program—Construction Material, or the FAR clause at 52.225-11, Buy American Act—Balance of Payment Program—Construction Material Under Trade Agreements. It requires the contractor, if the contractor wishes to submit a bid that includes foreign materials, to furnish a list of the specific foreign materials the contractor intends to use and a price for such materials.

*Description of need for information and proposed use of information:* The information is required to evaluate whether VA will accept or reject the bid that includes foreign materials. The information is needed to ensure compliance with the Buy American Act while still allowing for the use of materials subject to the North American Free Trade Agreement or the Trade Agreements Act.

*Description of likely respondents:* Firms submitting bids which include foreign materials.

*Estimated number of respondents:* 40.

*Estimated frequency of responses:* Once with the bid.

*Estimated average burden per collection:* 30 minutes.

*Estimated total annual reporting and recordkeeping burden:* 20 hours.

*Title and Provision/Clause Number:* Clause at 852.236-91, Special notes.

*Summary of collection of information:* This clause is used in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold. It requires the bidder, at the request of the contracting officer, to furnish information on the bidder's previous experience, organization, technical qualifications, financial resources, and facilities available to perform the work. Generally, this information is requested only from the bidder in line for award.

In addition, this clause requires contractors to submit, along with any claim for weather delay, climatological data covering the period of the claim and covering the same period for the 10 preceding years.

*Description of need for information and proposed use of information:* The information is required to assist the contracting officer in evaluating the bidder's qualifications and responsibility and to assist the contracting officer in evaluating a contractor's claim based on severe weather.

*Description of likely respondents:* The low bidder on a construction contract solicitation and any contractors submitting a contract claim based on severe weather conditions.

*Estimated number of respondents:* 850 low bidders and 20 contractors submitting weather related claims.

*Estimated frequency of responses:* Once for each low bidder and once for each weather related claim.

*Estimated average burden per collection:* 30 minutes for each low bidder and 60 minutes for each weather related claim.

*Estimated total annual reporting and recordkeeping burden:* 445 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

#### **Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### *Regulatory Flexibility Act*

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The proposed changes are small-business neutral and will not have a significant economic impact on a substantial number of small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

#### **List of Subjects**

##### *48 CFR Part 825*

Foreign currencies, Foreign trade, Government procurement.

##### *48 CFR Parts 832 and 846*

Government procurement.

##### *48 CFR Parts 801, 836 and 852*

Government procurement, Reporting and recordkeeping requirements.

Approved: May 23, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 48 CFR Chapter 8 is proposed to be amended as follows:

#### **PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM**

1. The authority citation for part 801 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.103-70 [Redesignated as 801.104-70]

2. Section 801.103-70 is redesignated as section 801.104-70.

3.-4. In section 801.301-70, paragraph (b) introductory text is added; paragraph (b)(1) is revised; and the table in paragraph (c) is amended by removing "852.236-81" and adding in its place "852.236-82", and by adding in numerical order the following sections and OMB control numbers to read as follows:

801.301-70 Paperwork Reduction Act requirements.

\* \* \* \* \*

(b) Contractors will not be requested to maintain systems of records unless prescribed in FAR or this VAAR.

(1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

\* \* \* \* \*

(c) \* \* \*

48 CFR part or section where identified and described	Current OMB Control No.
* * * * *	* * * * *
852.236-80 (Alt. I) .....	2900-0422
* * * * *	* * * * *
852.236-89 .....	2900-XXXX
852.236-91 .....	2900-XXXX
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PART 825—FOREIGN ACQUISITION

5. The authority citation for part 825 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

6. Subpart 825.9 is amended by:

A. Redesignating subpart 825.9 as 825.10 and revising the subpart heading.

B. Redesignating section 825.901 as 825.1001 and revising the section heading.

The redesignations and revisions read as follows:

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

7. Subpart 825.11 and section 825.1102 are added to read as follows:

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Solicitation provisions and contract clauses.

The Buy American Act (41 U.S.C. 10a-d), except as modified by the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA's position on foreign material, the contracting officer shall insert the clause at 852.236-89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225-9, Buy American Act—Balance of Payments Program—Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225-11, Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to NAFTA), insert the clause at 852.236-89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225-11 without its Alternate I (i.e., subject to both NAFTA and TAA), insert the clause at 852.236-89, Buy American Act, with its Alternate II.

PART 832—CONTRACT FINANCING

8. The authority citation for part 832 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

9. Subpart 832.1, consisting of section 832.111, is added to read as follows:

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

(a) The contracting officer shall insert the clause at 852.236-82, Payments under fixed-price construction contracts (without NAS), in solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, but that do not contain a section entitled "Network Analysis System (NAS)." When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 852.236-83, Payments under fixed-price construction contracts (including NAS), in solicitations and contracts for construction that include

the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled "Network Analysis System (NAS)." When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

10. The authority citation for part 836 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

836.202 [Amended]

11. Section 836.202 is amended by:

A. In paragraph (b), removing "of contract" and adding, in its place, "of a contract".

B. In paragraph (c), adding a "comma" immediately after "FAR 52.236-5"; removing "the clause" and adding, in its place, "the contracting officer shall include the clause"; and removing "shall be included".

12. Section 836.203 is added to read as follows:

836.203 Government estimate of construction costs.

The overall amount of the Government estimate shall not be disclosed until after award of the contract. After award, the overall amount may then be disclosed upon request.

836.208 [Removed]

13. Section 836.208 is removed.

14. Section 836.209 is revised to read as follows:

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or the Director, Technical Support Service (for National Cemetery Administration contracts) for contracts involving nonrecurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does not apply to design-build contracts, as defined at FAR 36.102.

836.211 [Removed]

15. Section 836.211 is removed.

16. Section 836.213-4 is added to read as follows:

**836.213-4 Notice of award.**

The contracting officer shall provide the contractor a notice of award (letter of acceptance) for any contract award in excess of \$25,000.

**836.371 [Redesignated as 836.213-70]**

17. Section 836.371 is amended by:

A. Redesignating section 836.371 as 836.213-70.

B. In paragraph (b), removing “requested. It will” and adding, in its place, “requested, or any other method that provides signed evidence of receipt. The notice to proceed will”; and removing “post office.” and adding, in its place, “post office or on the proof of delivery provided by the delivery service.”

C. In paragraph (d), removing “mail is used, the certified mail receipt card returned by the post office will” and adding, in its place, “mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will”.

**836.3 [Removed]**

18. Subpart 836.3 is removed.

19. Section 836.501 is added to read as follows:

**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 solicitations and contracts for construction that contain the FAR clause at 52.236-1, Performance of Work by the Contractor. When the solicitations and contracts include a section entitled “Network Analysis System (NAS),” the contracting officer shall use the clause with its Alternate I.

20. Section 836.521 is added to read as follows:

**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 contain the FAR clause at 52.236-21, Specifications and Drawings for Construction.

21. Sections 836.570 through 836.579 are added to read as follows:

**836.570 Correspondence.**

The contracting officer shall insert the clause at 852.236-76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.571 Reference to “standards.”**

The contracting officer shall insert the clause at 852.236-77, Reference to

“standards,” in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.572 Government supervision.**

The contracting officer shall insert the clause at 852.236-78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.573 Daily report of workers and materials.**

The contracting officer shall insert the clause at 852.236-79, Daily report of workers and materials, 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.

**836.574 Subcontractors and work coordination.**

The contracting officer shall insert the clause at 852.236-80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. 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.

**836.575 Schedule of work progress.**

The contracting officer shall insert the clause at 852.236-84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold and that do not contain a section entitled “Network Analysis System (NAS).”

**836.576 Supplementary labor standards provisions.**

The contracting officer shall insert the clause at 852.236-85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.577 Worker’s compensation.**

The contracting officer shall insert the clause at 852.236-86, Worker’s compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.578 Contract changes—supplement.**

(a) The contracting officer shall insert the clause at 852.236-88, Contract changes—supplement, in solicitations

and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) Paragraph (a) of the clause at 852.236-88 will apply to negotiated changes exceeding \$500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost or pricing data, will be negotiated by the contracting officer, and may be audited in accordance with FAR 15.404-2. When the negotiated change will be \$500,000 or less, paragraph (b) of the clause at 852.236-88 will apply.

(c) Proposals over \$500,000 shall be accompanied by certificates of current cost or pricing data, as provided in FAR 15.403-4. If cost or pricing data is required for proposals of \$500,000 or less, the contracting officer may require that the data be certified in accordance with FAR 15.403-4(a)(2).

(d) It is emphasized that the indirect cost rates in paragraph (b) of the clause at 852.236-88, for changes costing \$500,000 or less, are ceiling rates only and the contracting officer must negotiate the indirect expense rates within the ceiling limitations. The clause is a result of an approved FAR deviation pursuant to subpart 801.4.

**836.579 Special notes.**

The contracting officer shall insert the clause at 852.236-91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.602-1 [Amended]**

22. Section 836.602-1, paragraph (c) is amended by removing “project, and” and adding, in its place, “project and their”.

23. Section 836.602-2 is amended by:

A. In paragraph (a), removing “Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when” and adding, in its place, “Director, A/E Evaluation and Program Support Service. The Area Project Director or Project Manager will be designated to act as Chair when”; and by adding a “comma” immediately after “board’s members”.

B. In paragraph (b), removing “activity and” and adding, in its place, “activity (HCA) (or the senior contracting officer at the facility if there is no HCA on site) and”.

C. Paragraph (c) is added.

The addition reads as follows:

**836.602-2 Evaluation boards.**

\* \* \* \* \*

(c) The evaluation board for National Cemetery Administration (NCA) contracts will be appointed by the Director, Technical Support Service, and will consist of no less than three members, one of whom will serve as the board's Chair, and one of whom will be an NCA senior level contracting officer.

**836.602-4 [Amended]**

24. Section 836.602-4 is amended by removing "Central Office contracts) and" and adding, in its place, "Central Office contracts), the Deputy Under Secretary for Operations (for National Cemetery Administration contracts), and".

25. Section 836.605-5 is revised as follows:

**836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

Either of the procedures provided in FAR 36.602-5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

26. Section 836.603 is added to read as follows:

**836.603 Collecting data on and appraising firms' qualifications.**

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Technical Support Service, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

27. Section 836.606 heading is added immediately preceding 836.606-70, to read as follows:

**836.606 Negotiations.**

**836.606-73 [Amended]**

28. Section 836.606-73, paragraph (a)(3)(iii) is amended by adding a "comma" immediately after "samples".

**PART 846—QUALITY ASSURANCE**

29. The authority citation for part 846 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**846.302-70 [Amended]**

30. Section 846.302-70 is amended by removing "852.210-72(a)" and adding, in its place, "852.211-72(a)", and by removing "852.210-72(b)" and adding, in its place, "852.211-72(b)".

31. Section 846.312 is added to read as follows:

**846.312 Construction contracts.**

The contracting officer shall insert the clause at 852.236-74, Inspection of construction, in solicitations and contracts for construction that contain the FAR clause at 52.246-12, Inspection of Construction.

32. Subpart 846.7, consisting of sections 846.710, 846.710-70, and 846.710-71, is added to read as follows:

**Subpart 846.7—Warranties**

Sec.

846.710 Construction contracts.

846.710-70 Special warranties.

846.710-71 Warranty for construction—guarantee period services.

**Subpart 846.7—Warranties**

**846.710 Construction contracts.**

Contracting officers shall insert the FAR clause at 52.246-21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**846.710-70 Special warranties.**

The contracting officer shall insert the clause at 852.246-1, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246-21, Warranty for Construction.

**846.710-71 Warranty for construction—guarantee period services.**

The contracting office shall insert the clause at 852.246-2, Warranty for construction—guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246-21, Warranty for Construction, and also include guarantee period services.

**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

33. The authority citation for part 852 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**852.236-70 [Redesignated as 836.500]**

34. Section 852.236-70 is amended by:

A. Redesignating section 852.236-70 as section 836.500 and transferring newly designated section 836.500 to subpart 836.5.

B. In paragraph (a) of new section 836.500, removing "section" and adding, in its place, "subpart".

C. Revising the new section heading. The revision reads as follows:

**836.500 Scope of subpart.**

35. Section 852.236-71 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. In paragraph (d) of the clause, removing the "comma" immediately after "work".

D. Adding introductory text to the clause.

The revisions and addition read as follows:

**852.236-71 Specifications and drawings for construction.**

As prescribed in 836.521, insert the following clause:

**Specifications and Drawings for Construction**

The clause entitled "Specifications and Drawings for Construction" in FAR 52.236-21 is supplemented as follows:

\* \* \* \* \*

36.-37. Section 852.236-72 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

D. Revising paragraphs (b) and (d).

E. Revising the introductory Alternate I paragraph and paragraph (c) of Alternate I.

The revisions and addition read as follows:

**852.236-72 Performance of work by the contractor.**

As prescribed in 836.501, insert the following clause:

**Performance of Work by The Contractor (00/2001)**

The clause entitled "Performance of Work by the Contractor" in FAR 52.236-1 is supplemented as follows:

\* \* \* \* \*

(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 branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

\* \* \* \* \*

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236-1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in

accordance with the FAR clause at 52.236-1.

(End of clause)

*Alternate I (00/2001).* For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

\* \* \* \* \*

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

38. Section 852.236-74 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

The revisions and addition read as follows:

**852.236-74 Inspection of construction.**

As prescribed in 846.312, insert the following clause:

**Inspection of Construction (00/2001)**

The clause entitled "Inspection of Construction" in FAR 52.246-12 is supplemented as follows:

\* \* \* \* \*

**852.236-75 [Redesignated as 852.246-2]**

39. Section 852.236-75 is redesignated as 852.246-2, and is revised to read as follows:

**852.246-2 Warranty for construction—guarantee period services.**

As prescribed in 846.710-71, insert the following clause:

**Warranty for Construction—Guarantee Period Services (00/2001)**

The clause entitled "Warranty of Construction" in FAR 52.246-21 is supplemented as follows:

Should the contractor fail to prosecute 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 Section 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, appliance, 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)

40. In section 852.236-76, introductory text is added to read as follows:

**852.236-76 Correspondence.**

As prescribed in 836.570, insert the following clause:

\* \* \* \* \*

41. Section 852.236-77 is amended by:

A. Adding introductory text.

B. Revising the undesignated center heading clause and its date.

The addition and revision read as follows:

**852.236-77 Reference to "standards."**

As prescribed in 836.571, insert the following clause:

**Reference To "Standards" (00/2001)**

\* \* \* \* \*

42. In section 852.236-78, paragraph (c) is amended by removing "may by written direction make" and adding, in its place "may, by written direction, make"; and a section introductory text is added to read as follows:

**852.236-78 Government supervision.**

As prescribed in 836.572, insert the following clause:

\* \* \* \* \*

43. In section 852.236-79, section introductory text is added to read as follows:

**852.236-79 Daily report of workers and materials.**

As prescribed in 836.573, insert the following clause:

\* \* \* \* \*

44. Section 852.236-80 is amended by:

A. Revising the introductory text.

B. Adding a new paragraph immediately following the phrase "(End of clause)".

The revision and addition read as follows:

**852.236-80 Subcontracts and work coordination.**

As prescribed in 836.574, insert the following clause:

\* \* \* \* \*

(End of clause)

*Alternate I (00/2001).* 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:

\* \* \* \* \*

45. Section 852.236-81 is amended by:

A. Removing the section introductory text.

B. Removing the undesignated center clause heading.

C. Adding a paragraph "(b)" designation to the undesignated clause paragraph.

D. Removing the phrase "(End of clause)" at the end of the newly designated paragraph (b).

E. Transferring the newly designated paragraph (b) to section 852.236.80 immediately following the "Alternate I" paragraph.

F. Removing section 852.236-81 section heading.

46.-47. In section 852.236-82, the introductory text and paragraphs (b)(2) and (b)(3) are revised; the "Supplement I (Jan 1988)" clause is removed and an alternate I clause is inserted in its place to read as follows:

**852.236.82 Payments under fixed-price construction contracts (without NAS).**

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)":

\* \* \* \* \*

(b) \* \* \*

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the subbranches, as applied to each branch, shall equal the total cost of such branch. The total cost of all branches shall equal the contract price.

\* \* \* \* \*

*Alternate I (00/2001).* 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 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.

(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.

48. Section 852.236–83 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Revising the clause introductory text.

D. Removing the “Supplement I (JAN 1988)” introductory text and inserting in its place an Alternate I paragraph, and revising paragraphs (6)(ii) and (iii).

The revisions and additions read as follows:

**852.236.83 Payments under fixed-price construction contracts (including NAS).**

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled “Network Analysis System (NAS)”:

**Payments Under Fixed-Price Construction Contracts(00/2001)**

The clause entitled “Payments Under Fixed-Price Construction Contracts” in FAR 52.232–5 is implemented as follows:

\* \* \* \* \*

(End of clause)

*Alternate I (00/2001).* 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) \* \* \*

(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.

**852.236–84 [Amended]**

49. In section 852.236–84, the introductory text is revised to read as follows:

**852.236–84 Schedule of work progress.**

As prescribed in 836.575, insert the following clause:

\* \* \* \* \*

50. In section 852.236–85, introductory text is added to read as follows:

**852.236.85 Supplementary labor standards provisions.**

As prescribed in 836.576, insert the following clause:

\* \* \* \* \*

51. Section 852.236–86 is revised to read as follows:

**852.236–86 Worker's compensation.**

As prescribed in 836.577, insert the following clause:

**Worker's Compensation (00/2001)**

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States. (End of clause)

52.–53. Section 852.236–88 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraph (a) of the section.

C. Revising the first clause undesignated center heading.

D. Redesignating paragraphs (a) through (d) of the first clause as paragraphs (a)(1) through (a)(4), respectively.

E. Adding a new paragraph (a) introductory text to the first clause.

F. Removing from newly designated paragraph (a)(1) “to be submitted” and adding, in its place, “to be submitted as expeditiously as possible but”.

G. Removing from newly designated paragraph (a)(2) “submit a proposal” and adding, in its place, “submit a proposal, which includes the information required by paragraph (a)(1).”.

H. Removing from newly designated paragraph (a)(3) the comma immediately following the phrase “the contract”, and the comma immediately following the phrase “calendar days”.

I. Removing at end of the first clause the parenthetical “(End of clause)”.

J. Removing paragraph (b) of the section.

K. Removing the second clause introductory text immediately following the second undesignated center clause heading.

L. Redesignating paragraphs (a) through (k) of the second clause as paragraphs (b)(1) through (b)(11), respectively.

M. Adding a new clause paragraph (b) introductory text.

N. Removing from newly designated paragraph (b)(1) “to be submitted” and adding, in its place, “to be submitted as expeditiously as possible but”; and removing “data are required under FAR 15.403 for proposals over \$100,000, the cost of pricing” and adding, in its place, “data or information other than cost or pricing data are required under FAR 15.403, the”.

O. Removing from newly designated paragraph (b)(2) “submit a proposal for cost of changes in work within 30 calendar days.” and adding, in its place, “submit with 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work.”

P. Removing from newly designated paragraph (b)(3) the comma immediately following the phrase “the contract”, and the comma immediately following the phrase “calendar days”.

Q. Removing from newly designated paragraph (b)(9) “Workmen's” and adding, in its place, “Worker's”.

R. Removing the second clause undesignated center heading.

The revisions and additions read as follows:

**852.236–88 Contract changes—supplement.**

As prescribed in 836.578, insert the following clause:

**Contract Changes—Supplement (00/2001)**

\* \* \* \* \*

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over \$500,000:

\* \* \* \* \*

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing \$500,000 or less:

\* \* \* \* \*

**852.236–89 [Amended]**

54. Section 852.236–89 is revised to read as follows:

**852.236–89 Buy American Act.**

As prescribed in 825.1102, insert the following clause:

**Buy American Act (00/2001)**

(a) Reference is made to the clause entitled “Buy American Act—Balance of Payments Program—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 Cause)

*Alternate I (00/2001).* As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements," FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for North American Free Trade Agreement (NAFTA) 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 NAFTA country construction material.

*Alternate II (00/2001).* As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements," FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for designated country and North American Free Trade Agreement (NAFTA) 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 or NAFTA country construction material.

55. Section 852.236–91 is amended by:

A. Adding an introductory text to the section.

B. Revising the undesignated center clause heading and its date.

C. Revising paragraph (a) introductory text.

D. In paragraph (b), adding a "comma" immediately following the phrase "is permitted".

The additions and revisions read as follows:

**852.236–91 Special notes.**

As prescribed in 836.579, insert the following clause:

**Special Notes (00/2001)**

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

\* \* \* \* \*

56. Section 852.246–1 is added to read as follows:

**852.246–1 Special warranties.**

As prescribed in 846.710–70, insert the following clause:

**Special Warranties (00/2001)**

The clause entitled "Warranty of Construction" in FAR 52.246–21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246–21, Warranty of Construction, unless otherwise provided for in such special warranties.

(End of clause)

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