



# Federal Register

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**Tuesday,  
January 15, 2008**

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**Part III**

## **Department of Veterans Affairs**

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**48 CFR Chapter 8  
VA Acquisition Regulation: Plain Language  
Rewrite; Final Rule**

**DEPARTMENT OF VETERANS AFFAIRS**

**48 CFR Chapter 8**

**RIN 2900-AK78**

**VA Acquisition Regulation: Plain Language Rewrite**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) Acquisition Regulation (VAAR). This document revises the VAAR to conform to plain language principles, updates delegations of authority, and removes non-regulatory material. The document also makes changes in format, arrangement, and numbering to make the VAAR parallel to the Federal Acquisition Regulation (FAR) as required by the FAR. In addition, provisions that simply restate FAR provisions that are already applicable have been removed, and procedures for providing notice and a hearing to resolve issues regarding possible violations of the Gratuities clause, for establishing qualified products lists, for suspending or debaring a contractor, for expediting payments to small businesses, and for reducing or suspending payments upon a finding of contract fraud have been added. The VAAR clause on Organizational Conflicts of Interest has been expanded to cover a broader range of services that may be subject to organizational conflicts of interest. Additional VAAR clauses have been added to the list of clauses for use in commercial item solicitations and contracts. Items that have been deleted include requirements for setting aside construction and architect-engineer solicitations for small businesses that are in conflict with current statute, a requirement to conduct an audit of section 8(a) price proposals that is contrary to current FAR requirements, and a VAAR provision that requested data from offerors on veteran-owned small businesses that has been replaced by a FAR provision. Guidance to contracting officers on the types of data that should be requested from a contractor when evaluating the contractor's financial condition has been added. Other additions include a requirement to use the clause on Assignment of Claims in purchase orders and guidance to contracting officers on the criteria for revising the payment due dates for invoices. This final rule also makes non-substantive clarifying changes and corrections to the proposed rule. The Veterans Benefits, Health Care, and

Information Technology Act of 2006 (Pub. L. 109-461) was issued subsequent to the proposed rule. It will be addressed in a future rulemaking.

**DATES:** *Effective Date:* February 14, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On January 13, 2006, we published in the **Federal Register** (71 FR 2341-2424) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR) to update the VAAR and to revise the VAAR to conform to plain language principles. Comments were solicited concerning the proposal for 60 days, ending March 14, 2006. Eight respondents submitted comments on the proposed rule; most respondents submitted multiple comments. A discussion of the comments is provided below.

One commenter stated that the internal procedure, guidance, format, and work-flow items that do not impact VA's vendor base should be removed from the VAAR and relocated to internal documents.

We appreciate this comment and concur that material in the VAAR that does not impact the public may be removed from 48 Code of Federal Regulations (CFR) Chapter 8, and this final rule does remove some such material formerly contained in the VAAR. VA plans to remove additional material at a future date, but until the internal documents containing that guidance are published and in place within VA, that material cannot be removed from the VAAR. Future changes to the VAAR will be processed as the internal documents are put into place.

One commenter stated that the VAAR language should be updated to keep pace with the direction of Federal procurement and current thinking regarding performance-based acquisition, preference for acquisition of commercial items or services, electronic submissions, interagency contracting, etc.

We believe updating is an ongoing process; we will continue to seek to ensure the VAAR is current and up to date.

One commenter stated that based on recent Federal policy changes, such as the use of the Electronic Subcontracting Reporting System (eSRS), Wage

Determinations OnLine (WDOL), and the new security guidance as found in Homeland Security Presidential Directive (HSPD)-12 or Federal Information Processing Standards (FIPS) 201, any procedures in the VAAR that impact VA's vendor base should be updated.

We note that the VAAR supplements the FAR when we consider supplementation necessary. Otherwise, we rely on the FAR for such guidance. We are not aware of any procedures in the VAAR regarding these issues that require updating. We therefore make no change based on this comment.

One commenter stated that many clause prescriptions contain either the word "must" or "shall." To remain consistent with the FAR and other regulatory documents found across the Federal government, and "to simplify the use of any non-subjective language," the commenter recommended picking one of the two and using it throughout the document.

We appreciate this comment and based on it, we have changed the term used in all provision and clause prescriptions from "must insert" to "shall insert" to be consistent with the FAR. The FAR Drafting Guide otherwise provides that "must" and "shall" have the same meaning.

Several comments were received suggesting additions and changes to sections in Part 801 that are internal to VA and that do not impact the public.

We believe the referenced sections are internal guidance to contracting officers and we do not intend to add more internal guidance to the VAAR than is necessary (see Comment 1 above). However, the comments have been considered and this final rule makes changes from the proposed rule where appropriate in that internal guidance.

Two comments were received regarding the proposed provisions in 809.504(d) to expand the application of the clause at 852.209-70 to cover additional types of services. One commenter stated that the requirement to include the clause at 852.209-70 in all solicitations for services that are addressed in FAR 9.502 is unnecessary and essentially removes any flexibility on the part of contracting officers to make determinations regarding the applicability of organizational conflicts of interest based on the circumstances of a specific procurement. The commenter indicated that FAR 9.505 contains general rules that should be followed in this matter and that VA should empower contracting officers to make the determinations instead of relying on a blanket approach to incorporating this clause. The other commenter does not

believe it is necessary or appropriate to require all offerors for services listed in FAR 9.502 to submit a statement disclosing all facts relevant to an existing or potential conflict of interest. VA is applying the clause to every type of service listed in FAR 9.502 rather than determining what particular solicitations and contracts require the clause. By focusing only on those types of services listed in FAR 9.502, VA may be missing other non-services solicitations that could raise organizational conflict of interest issues. The commenter recommended that VA develop criterion as to when the contracting officer should evaluate the organizational conflict of interest issues in a solicitation and the resulting contract, particularly when some exclusion from future work could result from the instant award.

As an initial matter, we note that currently, 48 CFR Chapter 8 requires contracting officers to include the clause at 852.209-70 in all solicitations and contracts for consulting services. In the proposed rule, we proposed to add solicitations and contracts for management support services, other professional services, technical evaluation services, and systems engineering services, as provided in FAR 9.502, to the types of solicitations and contracts where the clause would be required. The FAR identifies these services as those more likely to involve organizational conflicts of interest. The clause does not require any submission of data or any action on the part of any offeror if the offeror, to the best of the offeror's knowledge and belief, has no organizational conflicts of interest. This is not a determination that the contracting officer can make in advance, as the contracting officer does not know the particular circumstances of each and every potential offeror in advance of issuing the solicitation. Determinations of whether potential organizational conflicts of interest exist are not dependent upon the type of service being procured but rather are dependent upon the specific circumstances of each offeror, circumstances which only the offeror might know. Since FAR 9.502 indicates that organizational conflicts of interest are more likely to occur in contracts for these types of services, we believe it is prudent to extend the use of the clause to at least include solicitations for these types of services. The clause only requires an offeror to provide supplemental information to the contracting officer if the offeror knows or believes that award of the contract to the offeror would involve an organizational conflict of interest. If the

offeror does not know or does not believe that award of a contract would involve an organizational conflict of interest, no action is required on the part of the offeror. The contracting officer is not in a position to make a blanket determination for and on behalf of every potential offeror under a specific solicitation. It is the offeror rather than the contracting officer that is in a position to know whether it has a potential organizational conflict of interest. This clause is not a substitute for FAR Subpart 9.5 and does not relieve the contracting officer from compliance with the requirements of 9.5. Rather, it supplements 9.5 by placing some responsibility on offerors to notify contracting officers of the existence of potential organizational conflicts of interest of which the contracting officer would not otherwise be aware. We believe the use of this clause is appropriate for the types of services specified in FAR 9.502 and as set forth in the proposed rule. Therefore, no change is being made in the final rule regarding the use of this clause.

One commenter stated that VA policies in Part 811 should be updated in terms of best value contracting, performance-based acquisition, and preference for commercial items. The part should address requirements for commodities that need specifications and those that do not and should include detailed policy on commercial item preference and use of statements of objectives or performance work statements in those situations where a specification is not required.

VA relies on the FAR for such guidance. We do not believe that additional guidance and coverage is required in Part 811 of the VAAR. Adding additional material to the VAAR that might impact the public is beyond the scope of this rulemaking.

One commenter stated that the focus of the VAAR should be revised from "purchasing compliance" to "purchasing performance." For example, adding clauses to Part 812 does not streamline or simplify the purchasing process, and the language which allows contracting officers to tailor solicitations defeats the preference for utilizing commercial practices.

We do not believe the clauses being added for use in commercial item acquisitions, when appropriate, are inconsistent with commercial practices or that they necessarily relate to contract compliance versus performance. The tailoring provisions simply establish agency procedures to implement the tailoring provisions authorized by the FAR at 12.302(c).

One commenter expressed concern that the lead-in language in section 812.301(a), that VA contracting officers "must use only those provisions and clauses in this part when acquiring commercial items," may be misread to mean that the clauses in Part 812 are mandatory. The commenter recommended revising the language to provide that only those clauses listed in FAR 12.3 are mandatory and to affirmatively state that clauses in 812.301 are optional.

We partially concur with the commenter's recommendation. We have made changes in the final rule from the proposed rule's language in 812.301(a) to clarify that the clauses referred to in Part 812 are to be used as appropriate, in accordance with the provision or clause prescriptions. We do not think that it is appropriate to refer in 812.301(a) to FAR 12.3, and believe that such a reference would be redundant.

One commenter expressed concern that by adding clause 852.209-70 to the list of clauses that may be used, as appropriate, in commercial item solicitations, contracting officers may routinely include that clause in all commercial item solicitations.

We partially concur and have made changes in the final rule from the proposed rule's language in 812.301(b) and (c) to clarify that the provisions and clauses listed therein are to be used in accordance with the prescriptions for those provisions and clauses. The prescription for use of clause 852.209-70 provides for use of the clause only in certain types of service contracts.

One commenter requests an update to section 814.201 regarding contract numbering to conform to how VA's Electronic Contract Management System (eCMS) is going to be used to automatically assign numbers to applicable contractual vehicles.

VA appreciates this comment and we intend to update this section upon implementation of eCMS and this final rule makes changes to the proposed rule by adding a statement regarding eCMS to this section.

One commenter stated that proposed VAAR Subparts 817.1 and 817.2 should be clarified regarding their application to standard multi-year pricing provisions and option clauses included in Federal Supply Schedule contracts; clarification should be added regarding multi-year contracts versus multiple options for renewal; and guidance should be added relative to contracts subject to the Veterans Health Care Act, 38 United States Code (U.S.C.) 8126.

We do not believe that this comment relates directly to the proposed rule change to the VAAR, as published in the

**Federal Register**, and, to the extent that it recommends adding material to the VAAR, it is beyond the scope of this rulemaking. Such additions would require a new proposed rule and opportunity for public comment. Rather, we believe that this comment is directed towards VA's administration of Federal Supply Schedule contracts and their intersection with the Veterans Health Care Act, 38 U.S.C. 8126. The proposed rule change to the VAAR does not affect and is not intended to affect the Veterans Health Care Act. Section 817.105-1 relates to VA's authority to enter into multi-year contracts for up to 5 years, as provided in 38 U.S.C. 114, unless otherwise authorized by statute, and subpart 817.2 relates to the use of options in solicitations under Office of Management and Budget Circular No. A-76. We do not believe it is necessary to further clarify the sections in subparts 817.1 and 817.2. These suggested changes will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

One commenter stated that a clause used in VA Federal Supply Schedule solicitations and contracts regarding an option to extend the term of the contract and relating to the Veterans Health Care Act, 38 U.S.C. 8126, should be added to the VAAR.

We do not believe that the comment relates directly to the proposed changes to the VAAR contained in the proposed rule, as published in the **Federal Register**. Rather, it is beyond the scope of this rulemaking. The suggested change to the VAAR would require a new proposed rule and opportunity for public comment. The suggested change will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

One commenter requested that the VAAR clarify the definition of "other publications" in proposed section 832.404 to include electronic media, and stated that subscriptions for publications or products that are available via electronic media are now commonplace in the commercial market.

We appreciate the request for clarification. However, rather than defining "other publications," which could result in an extensive list, the proposed rule revised this section to restate statute, which we believe does cover electronic media. We have made no change based on this comment.

One commenter stated that Section 847 of the National Defense Authorization Act for Fiscal Year 2006 terminates all agency boards of contract appeals, except for the General Services Administration, the Tennessee Valley

Authority, and the United States Postal Service, within a year of the date of enactment of the Act. The commenter requested that VA confirm the process for appeals to the VA Board of Contract Appeals prior to that date and the process that will be followed after that date, if possible.

We appreciate this comment and as mandated by Congress, on January 6, 2007, the VA Board of Contract Appeals was terminated and its contract adjudication functions were transferred to the Civilian Board of Contract Appeals. The final rule makes changes to the proposed rule by revising accordingly.

One commenter suggested changes to or clarification of General Services Administration clause 552.238-75.

Changes to the clause in 48 CFR 552.238-75 are outside the scope of this rulemaking. This clause is not a VAAR clause. Suggested changes to this clause should be directed to the General Services Administration. To the extent that the commenter is suggesting the addition of clarifying language to the VAAR supplementing General Services Administration clauses, the suggestion does not directly relate to the proposed changes to the VAAR contained in the proposed rule, as published in the **Federal Register**, and is beyond the scope of this rulemaking. Such a change to the VAAR would require a new proposed rule and opportunity for public comment. The suggested change will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

One commenter suggested that changes be made to the modified version of General Services Administration clause 552.215-72 used in VA Federal Supply Schedule solicitations and contracts.

We believe this is outside the scope of this rulemaking. The suggestion does not relate to the proposed changes to the VAAR as contained in the proposed rule published in the **Federal Register** and is beyond the scope of this rulemaking. The suggested change will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

One commenter suggested that various provisions used by VA in its Federal Supply Schedule solicitations and contracts that are not currently included in the VAAR be added to the VAAR.

We do not believe that the suggestion directly relates to the proposed changes to the VAAR as contained in the proposed rule published in the **Federal Register**. Rather, it is beyond the scope of this rulemaking. The suggestion

would involve changes to the VAAR which would require a new proposed rule and opportunity for public comment. The suggestion will be considered for possible generation of a new proposed rule change to the VAAR at a future date. As per Federal Acquisition Regulation (FAR) 8.402, the General Services Administration has delegated authority to the VA to procure health care related products and services under the VA Federal Supply Schedules program. This original General Services Administration delegation occurred via letter to VA in 1960 and was updated most recently in 2004.

One commenter requested that VA ensure that sections 801.670-1 and 847.303-1 clearly be written to conform to FAC 2005-7 and the Interstate Commerce Act, and stated that commercial bills of lading are now required for domestic shipment.

VA believes that sections 801.670-1 and 847.303-1 primarily provide internal VA guidance and we believe they do comply with FAC 2005-7 and the Interstate Commerce Act. The VA Commercial Bill of Lading referenced in section 847.303-1 is a commercial bill of lading.

Three commenters suggested changes to clause 852.211-70, Service data manuals, varying from specific suggested changes that would replace the requirements for hard copies of the manuals with other requirements involving electronic versions, to a suggestion that there be a complete rewrite of the clause to reflect electronic documentation standards used throughout the medical imaging community.

We agree that this clause may require revision and updating to conform to current commercial practices. However, we consider hard copies of such manuals to be necessary. Further, the clause not only impacts VA, it also impacts all of the other Federal agencies for which VA is the contracting office for medical equipment as well as members of the public. We believe that the suggested changes to this clause would require a new proposed rule and opportunity for public comment, including comment from other Federal agencies that might be impacted by such changes. These suggested changes will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

One commenter suggested that clause 852.211-72, Technical industry standards, be revised to add "voluntary consensus" prior to the word "standards" in the second line of the first paragraph of the clause.

The clause is not intended to limit required standards to only those that are voluntary consensus standards. By making this suggested change, VA would be limited to requiring compliance only with such voluntary standards. We are reluctant to place such limits on the use of this clause. We believe that the term “standards” would include voluntary consensus standards; therefore, we are making no changes to the clause.

One commenter urged VA to carefully instruct contracting officers to exercise caution when using the clause at 852.252–70 and incorporating FAR and VAAR provisions and clauses by reference in solicitations for commercial items. The commenter indicated that there is a specific reference in FAR 12.301(b)(2) and FAR clause 52.212–3 addressing the representations and certifications for commercial item contracts and a specific provision at FAR 12.301(e) addressing the use of discretionary clauses.

We believe that clause 852.252–70 allows contracting officers to include by reference in a solicitation any provisions or clauses that require completion by the offeror or prospective contractor. This clause was promulgated in the VAAR based on FAR 52.102(c)(1) and (c)(2). In a commercial item solicitation, only those provisions and clauses that pertain to or are appropriate for use in a commercial item solicitation may be included by reference. We are not sure of the intent of the commenter, but we do not believe contracting officers need special instructions to exercise caution in determining the appropriate provisions and clauses for commercial items. Therefore, we have made no such change in response to the comment.

One commenter stated VA should consider using this as an opportunity to reduce the number of VA-unique forms, such as the VA Form 90–2138 series.

We are making no change at this time based on this comment. This comment is beyond the scope of the proposed rule but will be considered for possible future changes. However, the use of agency-specific forms such as the VA 90–2138 series is authorized by the FAR (see FAR 53.213(f)).

One commenter interpreted the proposed rule as removing specific guidance pertaining to consignment agreements. The commenter urged that it be retained in the VAAR to ensure consistency throughout VA.

The current guidance in the VAAR on consignment agreements is at 870.108–3 in the non-codified portions of the printed VAAR (i.e., material that does not appear in 48 CFR Chapter 8), and is

not being removed by this final rule nor was it intended to be affected by the proposed revision of the codified VAAR. This non-codified material, along with the codified portions of the VAAR, can be found on the Office of Acquisition and Materiel Management Web page at <http://www1.va.gov/oamm/oa/ars/policyreg/vaar/index.cfm>. The non-codified material in the VAAR on this Web site is identified by a series of three colons before and after the non-codified material, e.g., ::xxxxxxxxxxxx::: At some future date, this non-codified guidance on consignment agreements may be relocated to VA’s Directives Management System or it may simply remain in the non-codified portions of the VAAR, but we do intend to retain the guidance on consignment agreements. To the extent that the commenter considers the guidance to have an impact on the public and that the provisions should be codified in 48 CFR Chapter 8, the comment does not relate to the proposed changes to the VAAR as contained in the proposed rule published in the **Federal Register** and is beyond the scope of this rulemaking. Adding such provisions to the codified VAAR would require a new proposed rule and opportunity for public comment. The suggestion to do so will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

Two commenters suggested that the guidance in VA information letters or clauses in VA solicitations for award of Federal Supply Schedule contracts be added to and included in the VAAR.

We do not believe that these comments directly relate to the proposed changes to the VAAR in the proposed rule. Rather, they are beyond the scope of this rulemaking and we believe that these suggested changes would require a new proposed rule and opportunity for public comment. These suggested changes will be considered for possible generation of a new proposed rule change to the VAAR at a future date.

#### Other Changes to the Proposed Rule

This final rule removes the citation of authority to negotiate nursing home contracts under 38 U.S.C. 1720 without regard to any other provision of law at 806.302–5(b)(6). That citation was incorrect, as there is no authority under 38 U.S.C. 1720 to negotiate nursing home contracts without regard to any other provision of law. Nursing home contracts must be negotiated in accordance with the FAR and VAAR.

“Glass, Wire” has been removed from the list of nonavailable articles under the Buy American Act as it duplicates

an article, “wire glass,” already listed in FAR 25.104.

Material formerly included in the proposed rule as Alternate I to the clause at 852.246–70, Guarantee, has been relocated as paragraph (b) to section 846.302–70, Guarantee clause, with no substantive change. The material has been determined to not be an alternate to the clause itself but rather to be instructions to the contracting officer on how to modify the clause under certain circumstances.

As published in the proposed rule in 852.236–83, paragraph (d)(3) incorrectly and inadvertently duplicated paragraph (d)(4). The correct paragraph (d)(3) is currently published in 48 CFR Chapter 8 and we did not intend to make any changes to paragraph (d)(3) in the proposed rule. This final rule reflects the correct version of paragraph (d)(3), as currently published in 48 CFR Chapter 8.

No substantive change has been made to the verbiage in the clause at 852.237–7, Indemnification and medical liability insurance, but the contracting officer’s note in paragraph (a) has been bracketed and italicized to instruct contracting officers to fill in the dollar values of the insurance required. Due to this nonsubstantive modification, the clause date has been changed.

Section 871.207(a)(1) provides that payment for tuition or fees under contracts for training or rehabilitation services shall be made in arrears. Section 871.210(h), which further discusses payment for correspondence courses, contained a typographical error—the word “areas” was used instead of the word “arrears” when discussing payment. This error has been corrected in section 871.210(h) to read “arrears.”

Other nonsubstantive changes have been made, principally to reflect current VA organizational structure and to correct typographical, grammatical, and similar errors. Changes have been made to internal VA guidance to contracting officers. These include, but are not limited to, changes to correspond to recently issued Office of Federal Procurement Policy guidance, such as the material covering the contracting officer certification program in 801.690. Internal VA procedures for establishing individual facility and staff office socioeconomic goals that were inadvertently left out of the proposed rule have been added back in at 819.202–5.

#### Chart of Clauses Renumbered and/or Renamed

A number of clauses have been renumbered and/or renamed by this

rulemaking and a chart listing those changes was published in the preamble to the proposed rule. We are republishing such a chart following this

paragraph to assist in tracking those changes. If no name appears in the second column below, the clause name remains unchanged. Only those clauses

that have been renumbered or renamed are included in this chart. Other clauses may have been changed without being renumbered or renamed.

Prior VAAR clause and title	Renumbered/renamed as
852.211-71, Guarantee .....	852.246-70.
852.211-72, Rejected goods .....	852.246-71, Inspection.
852.211-73, Frozen processed foods .....	852.246-72.
852.211-74, Special notice .....	852.211-71.
852.211-75, Technical industry standards .....	852.211-72.
852.211-76, Noncompliance with packaging, packing, and/or marking ..	852.246-73.
852.211-77, Brand name or equal .....	852.211-73.
852.211-78, Liquidated damages .....	852.211-74.
852.214-71, Alternate item(s) .....	852.214-71, Restrictions on alternate item(s); 852.214-72, Alternate item(s); and 852.214-73, Alternate packaging and packing.
852.214-73, Bid samples .....	852.214-74.
852.233-70, Protest content .....	852.233-70, Protest content/alternative dispute resolution.
852.237-71, Indemnification and insurance .....	852.228-71.
852.246-1, Special warranties .....	852.246-74.
852.246-2, Warranty for construction-guarantee period services .....	852.246-75.
852.252-1, Provisions or clauses that require completion by the offeror or prospective contractor.	852.252-70, Solicitation provisions or clauses incorporated by reference.
852.270-4, Commercial advertising .....	852.203-70.
852.271-71, Inspection .....	852.271-74.

As noted in the preamble to the proposed rule, no substantive changes have been made to the clauses in the chart above with the exceptions of 852.233-70, Protest content/alternative dispute resolution, where paragraph (c) has been added to encourage the use of alternative dispute resolution procedures, as provided in FAR 33.103(c), and clauses 852.271-71, Inspection, and 852.271-74, Inspection, which have been combined into one clause for simplicity.

**Paperwork Reduction Act of 1995**

This final rule contains provisions in sections 832.006-4 and 832.202-4 that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). In the preamble of the proposed rule, we described the collections in the proposed rule that would need approval by the Office of Management and Budget (OMB) and provided a comment period. We did not receive any comments concerning those collections. OMB has approved those proposed collections, and has assigned control number 2900-0688 to them. In section 801.106, OMB approval under the Paperwork Reduction Act, we are making a change in this final rule from the proposed rule by including this OMB control number. OMB assigns a control number for each collection 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.

**Conclusion**

Based on the rationale set forth in the proposed rule and in this document, VA is adopting the provisions of the proposed rule as a final rule with the changes discussed above.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The primary purpose of this document is to update the existing VAAR to correspond to FAR requirements and internal VA policy and to conform to plain language principles. Many of the changes are internal to VA and do not impact the public, do not impose any requirements on the public, and thus do not have an economic impact on small entities. The

changes that do impact the public are of minimal impact.

The addition of procedures for contractor hearings relative to: (1) Violating the Gratuities clause (section 803.204); (2) voiding or rescinding a contract (section 803.705); and (3) reducing or suspending payment due to fraud (section 832.006-4) only supplement authorities that are already in the FAR and are rarely used by VA. They do not add any new authorities that VA could have exercised under the FAR before issuance of this rule, and VA has not taken any action under these authorities against small entities over the past several years. Few, if any, actions are expected to be taken in the future. Thus, there is no impact on a substantial number of small entities.

The changes to Subpart 809.4 relative to suspension and debarment are changes to form and not to substance. The basic procedures remain unchanged and there is no change on the impact to small businesses.

The change to 819.202-1 relative to granting small businesses improved payment terms on contracts is not a new authority, but the VAAR lacked guidance on how to exercise this authority. Title 5 CFR 1315.5 already authorizes agencies to pay small businesses as quickly as possible. This change may encourage VA contracting officers to use this authority more often, but the impact of this provision on small business would be both minimal and entirely beneficial. With the advent of purchase cards, small businesses that accept the cards already receive payment within a matter of a few days following their submission of a request for payment to VISA. This rule provision would have no impact on small businesses that accept the purchase card.

The rule removes a current provision in section 819.502-2 mandating that certain solicitations be treated as though SBA initiated a set-aside request. This provision is inconsistent with the requirements in FAR subpart 19.10 and the Small Business Competitiveness Demonstration Program of 1988, Public Law 100-656 (codified as amended at 15 U.S.C. 644 note). Those authorities require that competition for procurement contracts relating to construction and A/E services be unrestricted. Because Public Law 100-656 and FAR subpart 19.10 prohibit VA from setting aside a solicitation under the circumstances specified in VAAR 819.502-2, the removal of that superseded provision will not have any effect on small entities.

The changes in sections 803.204, 803.705, and 832.006-4 will not impose

more than minimal costs on any small entities, as VA has not taken action under the corresponding FAR provisions over the past several years and we do not expect to take many, if any, actions in future years. The positive financial benefit to small entities of the change to 819.202-1 is also considered to be minimal. The authority to expedite payments already exists under the FAR and we expect few additional cases where this authority will be used as a result of the addition of these provisions to the VAAR. Even where there are additional uses of this authority, the financial benefit to small entities of expedited payment is expected to be minimal. Therefore, under 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### List of Subjects

*48 CFR Parts 801, 809, 811, 836, and 852*

Government procurement, Recordkeeping and reporting requirements.

*48 CFR Parts 802, 804, 805, 806, 807, 808, 812, 813, 814, 815, 816, 817, 824, 832, 837, 846, 849, 853, and 873*

Government procurement.

*48 CFR Part 803*

Improper Business Practices and Personal Conflicts of Interest.

*48 CFR Part 819*

Small Business and Small Disadvantages Business Concerns.

*48 CFR Part 822*

Application of Labor Laws to Government Acquisitions.

*48 CFR Part 825*

Foreign Acquisitions.

*48 CFR Part 828*

Bonds and Insurance.

*48 CFR Part 829*

Taxes.

*48 CFR Parts 831*

Contract Cost Principles and Practices.

*48 CFR Part 833*

Protests, Disputes, Appeal.

*48 CFR Part 841*

Government procurement, Utilities.

*48 CFR Part 847*

Government procurement, Transportation.

*48 CFR Part 870*

Asbestos, Frozen foods, Government procurement, Telecommunications.

*48 CFR Part 871*

Government procurement, Loan programs—social programs, Loan programs—veterans, Recordkeeping and reporting requirements, Vocational rehabilitation.

Approved: September 28, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

**Editorial Note:** This document was received at the Office of the Federal Register on December 26, 2007.

■ For the reasons set out in the preamble, VA revises 48 CFR Chapter 8 to read as follows:

## CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

### Subchapter A—General

Part

801 Department of Veterans Affairs

Acquisition Regulation Systems.

802 Definitions of words and terms.

803 Improper business practices and personal conflicts of interest.

804 Administrative matters.

### Subchapter B—Competition and Acquisition Planning

805 Publicizing contract actions.

806 Competition requirements.

807 Acquisition planning.

808 Required sources of supplies and services.

809 Contractor qualifications.

811 Describing agency needs.

812 Acquisition of commercial items.

### Subchapter C—Contracting Methods and Contract Types

813 Simplified acquisition procedures.

814 Sealed bidding.

815 Contracting by negotiation.

816 Types of contracts.

817 Special contracting methods.

### Subchapter D—Socioeconomic Programs

819 Small business programs.

822 Application of labor laws to Government acquisitions.

823 Environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.

824 Protection of privacy and freedom of information.

825 Foreign acquisition.

826 Other socioeconomic programs.

### Subchapter E—General Contracting Requirements

828 Bonds and insurance.

829 Taxes.

830 Cost accounting standards administration.

831 Contract cost principles and procedures.

832 Contract financing.

833 Protests, disputes, and appeals.

**Subchapter F—Special Categories of Contracting**

- 836 Construction and architect-engineer contracts.
- 837 Service contracting.
- 839 Acquisition of information technology.
- 841 Acquisition of utility services.

**Subchapter G—Contract Management**

- 842 Contract administration and audit services.
- 844 Subcontracting policies and procedures.
- 846 Quality assurance.
- 847 Transportation.
- 849 Termination of contracts.

**Subchapter H—Clauses and Forms**

- 852 Solicitation provisions and contract clauses.
- 853 Forms.

**Subchapter I—Department Supplementary Regulations**

- 870 Special procurement controls.
- 871 Loan guaranty and vocational rehabilitation and employment programs.
- 872 [Reserved]
- 873 Simplified acquisition procedures for health-care resources.

**Subchapter A—General****PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM**

Sec.

- 801.000 Scope of part.

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

- 801.101 Purpose.
- 801.103 Authority.
- 801.104 Applicability.
- 801.104-70 Exclusions.
- 801.105 Issuance.
- 801.105-2 Arrangement of regulations.
- 801.106 OMB approval under the Paperwork Reduction Act.

**Subpart 801.2—Administration**

- 801.201 Maintenance of the FAR.
- 801.201-1 The two councils.

**Subpart 801.3—Department Acquisition Regulations**

- 801.304 Department control and compliance procedures.

**Subpart 801.4—Deviations From the FAR or VAAR**

- 801.403 Individual deviations.
- 801.404 Class deviations.

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

- 801.601 General.
- 801.602 Contracting officers.
- 801.602-2 Responsibilities.
- 801.602-3 Ratification of unauthorized commitments.
- 801.602-70 General review requirements.
- 801.602-71 Basic review requirements.
- 801.602-72 Exceptions and additional review requirements.

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

- 801.602-74 Review requirements for an interagency agreement.

- 801.602-75 Review requirements—OGC.

- 801.602-76 Business clearance review.

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

- 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.

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

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

- 801.602-81 Documents required for business clearance reviews.

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

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

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

- 801.602-85 Results of review.

- 801.603 Selection, appointment, and termination of appointment.

- 801.603-1 General.

- 801.603-70 Representatives of contracting officers.

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

- 801.670 Special and limited delegation.

- 801.670-1 Issuing bills of lading.

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

- 801.670-4 National Cemetery Administration.

- 801.670-5 Letters of agreement.

- 801.680 Contracting authority of the Inspector General.

- 801.690 VA's COCP.

- 801.690-1 Definitions.

- 801.690-2 General.

- 801.690-3 Responsibility under the COCP.

- 801.690-4 Selection.

- 801.690-5 Requirements for contracting authority.

- 801.690-6 Appointment.

- 801.690-7 Termination.

- 801.690-8 Interim appointment provisions.

- 801.690-9 Distribution of Certificates of Appointment.

- 801.695 VA's Appointment of HCAs program.

- 801.695-1 Policy.

- 801.695-2 Procedures for appointment of HCAs.

- 801.695-3 Authority of the HCA.

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

**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 covers 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)(1)(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 given VA the following approval numbers:

48 CFR part or section where identified and described	Current OMB control number	48 CFR part or section where identified and described	Current OMB control number
809.106–1 .....	2900–0418	852.214–70 .....	2900–0593
809.504(d) .....	2900–0418	852.228–71 .....	2900–0590
813 .....	2900–0393	852.236–72 .....	2900–0422
832.006–4 .....	2900–0688	852.236–79 .....	2900–0208
832.202–4 .....	2900–0688	852.236–80 (Alt. I) .....	2900–0422
836.606–71 .....	2900–0208	852.236–82 through 852.236–84 .....	2900–0422
852.207–70 .....	2900–0590	852.236–88 .....	2900–0422
852.209–70 .....	2900–0418	852.236–89 .....	2900–0622
852.211–70 .....	2900–0587	852.236–91 .....	2900–0623
852.211–71 .....	2900–0588	852.237–7 .....	2900–0590
852.211–72 .....	2900–0586	852.270–3 .....	2900–0589
852.211–73 .....	2900–0585		

**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 (COCP).

(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 COCP.

#### **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. 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.

(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 Resources 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.)

(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 conference 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 anticipated 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 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).	Contracting officer .....	Regional Office of the General Counsel.
(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 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.**

An Office of Construction and Facilities Management or National Cemetery Administration (Construction Support 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.

(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.

#### **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 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.)

**801.690-1 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 includes 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.

*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.

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*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 Operations 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) *HCAs.* 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 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;
- (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 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**

### **Subpart 802.1—Definitions**

Sec.

802.101 Definitions.

**Authority:** 40 U.S.C. 121(C) and 48 CFR 1.301-1.304.

### **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.

*D&S Committee* means the VA Debarment and Suspension Committee, a committee consisting of the Director, Acquisition Resources Service (chair), and representatives of the Office of Management, Office of Inspector General, and the program office to which the particular debarment or suspension case relates. A representative from OGC will serve as legal counsel to the D & S Committee.

*Debarring official* means the DSPE, who is also the Associate Deputy Assistant Secretary for Acquisitions.

Authority to impose debarment is delegated to the SPE and is further delegated to the DSPE.

*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).

*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.

*Suspending official* means the DSPE. Authority to impose suspension is delegated to the SPE and is further delegated to the DSPE.

*VA* means the Department of Veterans Affairs.

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

*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.

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

### **Subpart 803.1—Safeguards**

Sec.

803.101 Standards of conduct.

803.101-3 Department regulations.

803.104 Procurement integrity.

803.104-7 Violations or possible violations.

### **Subpart 803.2—Contractor Gratuities to Government Personnel**

803.203 Reporting suspected violations of the Gratuities clause.

803.204 Treatment of violations.

### **Subpart 803.3—Reports of Suspected Antitrust Violations**

803.303 Reporting suspected antitrust violations.

### **Subpart 803.4—Contingent Fees**

803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 803.5—Other Improper Business Practices**

- 803.502 Subcontractor kickbacks.  
 803.570 Commercial advertising.  
 803.570-1 Policy.  
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**Subpart 803.6—Contracts with Government Employees or Organizations Owned or Controlled by Them**

- 803.602 Exceptions.

**Subpart 803.7—Voiding and Rescinding Contracts**

- 803.703 Authority.  
 803.705 Procedures.

**Subpart 803.8—Limitation on the Payment of Funds to Influence Federal Transactions**

- 803.804 Policy.  
 803.806 Processing suspected violations.

**Subpart 803.70—Contractor Responsibility To Avoid Improper Business Practices**

- 803.7000 Display of the VA Hotline poster.  
 803.7001 Contract clause.

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

**Subpart 803.1—Safeguards****803.101 Standards of conduct.****803.101-3 Department regulations.**

(a) Part 0 of 38 Code of Federal Regulations (CFR) states the standards of conduct for all VA employees, including contracting officials.

(b) Subpart B of 38 CFR part 0 states the employee financial disclosure requirements.

**803.104 Procurement integrity.****803.104-7 Violations or possible violations.**

(a) Contracting officers must forward the information required by FAR 3.104-7(a)(1) to the HCA. In consultation with OGC, the HCA may make the determination and concurrence specified in FAR 3.104-7(a)(1).

(b) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see FAR 3.104-3), the HCA will take action in accordance with FAR 3.104-7(b). The HCA must also report violations or possible violations to the VA Office of the Inspector General.

(c) The authority to make the determinations specified in FAR 3.104-7(b)(5) and 3.104-7(d)(2)(ii)(B) is delegated to the SPE and is further delegated to the DSPE.

(d) As provided in FAR 3.104-7(f), the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.

**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 SPE may make the determinations required by FAR 3.204. This authority is further delegated to the DSPE. The DSPE shall use the following procedures to determine whether or not a violation of the Gratuities clause has occurred:

(a) Upon receipt of an allegation or evidence of a violation of the Gratuities clause, the DSPE shall refer the matter to the D&S Committee to conduct a fact-finding. Upon completion of the fact-finding, the D&S Committee shall present the facts and recommendations for further action to the DSPE.

(b) If the DSPE finds a basis for further action, the D&S Committee shall prepare a notice under FAR 3.204 for signature of the DSPE. If suspension or debarment is also being considered, the D&S Committee shall also follow the procedures contained in 809.4. The signed notice 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 D&S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.

(c) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice, the D&S Committee will prepare a recommendation and refer the case to the DSPE for a decision on whether or not to take further action under FAR 3.204.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice, the D&S Committee

must consider the information in the reply before the D&S Committee makes its recommendation to the DSPE.

(e) The D&S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee, in person or through a representative, to present information or argument. 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. The D&S Committee shall prepare a report of the presentation for submission to the DSPE and must consider the information presented when making its recommendation to the DSPE.

(f) If the D&S Committee finds that the contractor's submission in opposition to further action under FAR 3.204 raises a genuine dispute over facts material to the action, then the D&S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to a designee for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor. The DSPE should consider any mitigating factors, such as those listed at FAR 9.406-1 and 809.406-1, prior to making a final decision.

**Subpart 803.3—Reports of Suspected Antitrust Violations****803.303 Reporting suspected antitrust violations.**

(a) Any VA employee who suspects or has evidence of possible antitrust violations must report the suspected violations, in accordance with FAR 3.303, to the VA Office of the Inspector General and to the Assistant Secretary for Management for review and submission to OGC.

(b) Either the General Counsel or the Inspector General will determine whether to submit the case to the U.S. Attorney General.

**Subpart 803.4—Contingent Fees****803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees must report the matter to the contracting officer or to the VA Office of Inspector General.

(b) In addition to the requirement in paragraph (a) of this section, a contracting officer must report a suspected or actual misrepresentation or violation to the DSPE.

(c) Before taking any administrative action under FAR 3.405, a contracting officer must consult with his or her Regional Counsel. A contracting officer in the Central Office must consult with OGC.

(d) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under FAR 3.405(b)(4) through OGC or the VA Office of the Inspector General, with a copy to the Assistant Secretary for Management. The General Counsel or the Inspector General will determine whether to forward the referral to the Department of Justice.

**Subpart 803.5—Other Improper Business Practices****803.502 Subcontractor kickbacks.**

A VA employee who suspects a violation of the Anti-kickback Act must report the suspected violation to OGC for review.

**803.570 Commercial advertising.****803.570-1 Policy.**

It is VA policy that contractors will not advertise the award of contracts or refer to VA contracts in contractors' commercial advertising in such a manner as to state or imply that VA endorses a product, project, or commercial line of endeavor. The intent of this policy is to preclude the appearance of bias toward any product or service.

**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.

**Subpart 803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them****803.602 Exceptions.**

The authority to authorize an exception to the policy in FAR 3.601 is delegated to the SPE and is further delegated to the DSPE.

**Subpart 803.7—Voiding and Rescinding Contracts****803.703 Authority.**

The authority to make determinations under FAR Subpart 3.7, Voiding and Rescinding Contracts, is delegated to the SPE and is further delegated to the DSPE.

**803.705 Procedures.**

In making a determination to void or rescind a contract, the DSPE must follow the procedures of FAR 3.705 and the following:

(a) Upon receipt of an allegation or evidence of situations meeting the provisions of FAR 3.700, the DSPE shall refer the matter to the D&S Committee to conduct a finding of facts. Upon completion of the fact-finding, the D&S Committee shall present the facts and recommendations for further action to the DSPE.

(b) If the DSPE finds a basis for further action, the D&S Committee shall prepare a notice under FAR 3.705 for signature of the DSPE. If suspension or debarment is being considered, the D&S Committee shall also follow the procedures of 809.4. The signed notice will be sent to the last known address of the contractor, the contractor's counsel, or registered agent, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.

(c) If VA does not receive a reply from the contractor within 30 calendar days of receipt of the notice by the addressee, the D&S Committee will prepare a recommendation and refer the case to the DSPE for a decision on whether or not to take further action under FAR 3.705.

(d) If VA receives a reply from the contractor within 30 calendar days of receipt of the notice, the D&S Committee must consider the information in the reply before the D&S Committee makes its recommendation to the DSPE.

(e) The D&S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee, in person or through a

representative, to present information or argument. 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. The D&S Committee shall prepare a report of the presentation for submission to the DSPE.

(f) If the D&S Committee finds that the contractor's submission in opposition to further action under FAR 3.705 raises a genuine dispute over facts material to the action, then the D&S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to a designee for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D&S Committee by the contractor.

**Subpart 803.8—Limitation on the Payment of Funds to Influence Federal Transactions****803.804 Policy.**

A contracting officer must forward a copy of all contractor disclosures furnished under the clause at FAR 52.203-12, Limitations on Payments to Influence Certain Federal Transactions, to the Director, Acquisition Resources Service, for subsequent submission by the Secretary to Congress.

**803.806 Processing suspected violations.**

A VA employee must report suspected violations of 31 U.S.C. 1352, Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, to the Assistant Secretary for Management and the VA Office of the Inspector General.

**Subpart 803.70—Contractor Responsibility to Avoid Improper Business Practices****803.7000 Display of the VA Hotline poster.**

(a) Under the circumstances described in paragraph (b) of this section, a contractor must display prominently a VA Hotline poster prepared by the VA Office of Inspector General in a common

work area within a business segment performing work under a VA contract.

(b) A contractor must comply with paragraph (a) of this section when all of the following apply:

(1) The contractor is awarded a VA contract for \$500,000 or more for supplies or services, or \$3 million or more for construction.

(2) The contractor has not established an internal reporting mechanism and program, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

#### **803.7001 Contract clause.**

The contracting officer shall insert the clause at 852.203-71, Display of Department of Veterans Affairs Hotline poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7000.

### **PART 804—ADMINISTRATIVE MATTERS**

#### **Subpart 804.1—Contract Execution**

Sec.

804.101 Contracting officer's signature.

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

#### **Subpart 804.1—Contract Execution**

##### **804.101 Contracting officer's signature.**

(a) If a contracting officer's name and title has been typed, stamped, or printed on the contract, and that contracting officer is not available to sign the contract, another contracting officer, as specified in 801.602, may sign the contract.

(b) The contracting officer who signs the contract must have contracting authority to cover the contract to be signed and must annotate his or her name and title below his or her signature.

### **SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**

### **PART 805—PUBLICIZING CONTRACT ACTIONS**

#### **Subpart 805.2—Synopsis of Proposed Contract Actions**

Sec.

805.202 Exceptions.

805.205 Special situations.

805.207 Preparation and transmittal of synopses.

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

#### **Subpart 805.2—Synopsis of Proposed Contract Actions**

##### **805.202 Exceptions.**

In accordance with FAR 5.202, the contract actions in 806.302-5 do not require synopsising.

##### **805.205 Special situations.**

(a) A contracting officer may procure paid advertising in a daily newspaper circulated in the local area to publicize a proposed procurement of architectural and engineering (A/E) services not expected to exceed \$10,000. See FAR 5.101(b)(4)(i) and 5.502(a).

(b) A contracting officer may procure paid advertising in a daily newspaper circulated in the local area or in professional journals to publicize a proposed procurement of professional services (e.g., scarce medical specialist services, health-care resources, advisory and assistance services). See FAR 5.101(b)(4)(i) and 5.502(a).

##### **805.207 Preparation and transmittal of synopses.**

(a) When an A/E evaluation board is ready to advertise for A/E services, the board must establish the geographic area within which it will consider A/E firms (including joint ventures).

(b) The geographic area must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

### **PART 806—COMPETITION REQUIREMENTS**

#### **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.

#### **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.

(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.

**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.

**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 Government supply sources.

##### **Subpart 808.4—Federal Supply Schedules**

808.402 General.

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

808.802 Policy.

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

##### **808.002 Priorities for use of Government supply sources.**

(a) *Supplies.* (1) As used in FAR 8.002(a)(1)(i), the term “agency inventories” includes Supply Fund Stock and VA Excess.

(2) A national committed use contract awarded by the VA National Acquisition Center has a priority between wholesale supply sources (FAR 8.002(a)(1)(v)) and mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)).

(3) Federal Supply Schedule contracts awarded by the VA National Acquisition Center in Federal Supply Classification (FSC) Groups 65 and 66 shall be mandatory for use by VA and shall have the same order of priority as mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)). VA contracting officers must place orders against Federal Supply Schedules contracts awarded by the VA National Acquisition Center in FSC Groups 65 and 66 in the following descending order of priority:

(i) Nationally awarded Blanket Purchase Agreements (BPAs), issued by the VA National Acquisition Center against Federal Supply Schedules.

(ii) Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against Federal Supply Schedules.

(iii) Federal Supply Schedules without BPAs.

(4) Indefinite delivery indefinite quantity (IDIQ) contracts, awarded by VISN, regional, or local facility VA

contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts shall have an order of priority between optional use Federal Supply Schedules (FAR 8.002(1)(a)(vii)) and commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)). VA contracting officers must place delivery orders against IDIQ contracts, awarded by VISN, regional, or a local facility contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts in the following descending order of priority:

(i) VISN or regionally awarded contracts.

(ii) Locally awarded contracts.

(5) Open market purchases (purchases not falling within any of the higher priorities in paragraphs (a)(2) through (4) of this section) have the same priority as commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)).

(b) *Unusual or compelling urgency.* The contracting officer may use a source lower in priority than as specified in paragraph (a) of this section when the need for supplies or services is of an unusual or compelling urgency (see FAR 6.302-2). The Contracting Officer must include a justification for each deviation in the procurement file.

(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.

##### **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.

#### **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.

809.104 Standards.

809.104-2 Special standards.

809.106 Preaward surveys.

809.106-1 Conditions for preaward surveys.

##### **Subpart 809.2—Qualifications Requirements**

809.201 Definitions.

809.202 Policy.

809.204 Responsibilities for establishment of a qualification requirement.

809.206 Acquisitions subject to qualification requirements.

809.206-1 General.

809.270 Qualified products for convenience/labor-saving foods.

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

809.400 Scope of subpart.

809.402 Policy.

809.404 Excluded Parties List System.

809.405 Effect of listing.

809.405-1 Continuation of current contracts.

809.405-2 Restrictions on subcontracting.

809.406 Debarment.

809.406-1 General.

809.406-3 Procedures.

809.406-4 Period of debarment.

809.407 Suspension.

809.407-1 General.

809.407-3 Procedures.

809.470 Fact-finding procedures.

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

809.503 Waiver.

809.504 Contracting officer responsibilities.

809.507 Solicitation provisions and contract clause.

809.507-1 Solicitation provisions.

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

##### **Subpart 809.1—Responsible Prospective Contractors**

##### **809.104 Standards.**

##### **809.104-2 Special standards.**

(a) For a pre-award survey prescribed by 809.106-1, a contracting officer must develop special standards of sanitation applicable to the acquisition of subsistence and services prescribed by 809.106-1(a).

(b) An appropriate specialist will assist the contracting officer in

developing the special standards under paragraph (a) of this section.

#### **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 809.2—Qualifications Requirements**

##### **809.201 Definitions.**

For the purposes of this subpart: *VA QPL* means a VA Qualified Products List, a list of products qualified by the VA under VA specifications, or purchase descriptions, or commercial item descriptions.

*VISN QPL* means a VISN Qualified Products List, a list of products qualified by a VISN under VA specifications, or purchase descriptions, or commercial item descriptions.

##### **809.202 Policy.**

The HCA may sign a justification required by FAR 9.202(a)(1).

##### **809.204 Responsibilities for establishment of a qualification requirement.**

(a) Under FAR Subpart 9.2, VA may create VA QPLs for use on individual solicitations or on multiple solicitations issued by one or more VA facilities.

(b) An HCA or designee must support the creation of a VA QPL using one or more of the following justifications:

(1) The time required for testing the product after award would unduly delay product delivery.

(2) The cost of repetitive product testing would be excessive.

(3) Testing the product would require purchasing an expensive or complicated apparatus not commonly available.

(4) It is in the Government's interest to be assured before contract award that the product is satisfactory for its intended use.

(5) Determining acceptability would require providing product performance data to supplement technical requirements in the specification.

(6) Conducting a test would result in substantial or repetitive rejections.

(7) VA cannot economically develop clear, professional specifications for the product performance, balance, design, or construction, and professional judgment is required to determine whether the product is acceptable under VA requirements.

(c) If VA plans to establish a VA QPL for any given product, the contracting

officer may limit known suppliers to suppliers whose products are covered by a Federal Supply Schedule contract, as provided at FAR Subpart 8.4.

(d) VA will pay the costs to inspect and test a product sample submitted under this section.

(1) The product supplier must pay for the sample and its transportation to the place of inspecting and testing.

(2) After inspection and testing, VA will return any product sample to the supplier "as is" unless:

(i) The inspection or test destroys the sample; or

(ii) The supplier authorizes VA to retain or dispose of the sample.

(e) Once VA accepts a product for the VA QPL, VA may review the product for compliance with the applicable specification at any time.

(1) Where there is a variance between a VA specification that was the basis for the VA QPL and the product furnished by the supplier, the supplier must furnish an item that conforms to the VA specification.

(2) If the supplier fails to or is unable to provide a product that conforms to the applicable VA specification, the product will be removed from the VA QPL.

(f) VA's acceptance of a product for listing on the VA QPL does not:

(1) Guarantee that VA will accept the product in any future purchase; or

(2) Constitute a waiver of the specifications as to acceptance, inspection, testing, or other provisions of any future contract involving the product.

##### **809.206 Acquisitions subject to qualification requirements.**

##### **809.206-1 General.**

The HCA may determine that an emergency exists, as provided in FAR 9.206-1(b).

##### **809.270 Qualified products for convenience/labor-saving foods.**

(a) Each VISN Nutrition and Food Service representative is authorized to establish a common VISN QPL for convenience and labor-saving foods for use at medical facilities within the representative's VISN.

(1) The VISN Nutrition and Food Service representative must notify the Director, Nutrition and Food Service, VA Central Office, of the establishment or amendment of any VISN QPL.

(2) To avoid unnecessary duplication within a VISN, for medical facilities using an applicable VISN QPL under paragraph (b) of this section, the VISN Nutrition and Food Service representative must coordinate and

consolidate test results and recommendations.

(b) Each medical facility may:

(1) Use its VISN QPL; and

(2) Test food of its choice, provided that the facility submits test results to the VISN Nutrition and Food Service representative.

(c) The VISN representative must provide a copy of each approved VISN QPL to the following:

(1) Each contracting office in the VISN.

(2) The Director, Nutrition and Food Service, VA Central Office.

(3) Upon request, the Office of Acquisition and Materiel Management, VA Central Office.

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

#### **809.400 Scope of subpart.**

This subpart supplements provisions of the FAR concerning procedures and related actions for the debarment and suspension of contractors.

#### **809.402 Policy.**

(a) When VA receives information that another agency is pursuing a debarment or suspension identical to a VA action against the same contractor, the Debarment and Suspension (D&S) Committee will coordinate prospective action with the appropriate official of the other agency to establish a lead agency.

(b) The D&S Committee will provide the designated lead agency with any information relevant to the action for consideration in the decision-making process.

(c) The D&S Committee will maintain close coordination with the appropriate official through completion of a final debarment or suspension decision.

#### **809.404 Excluded Parties List System.**

Acquisition Resources Service, Office of Acquisition and Materiel Management, is responsible for the actions described in FAR 9.404(c).

#### **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 whose names appear on the Excluded Parties List System is delegated to the SPE and is further delegated to the DSPE.

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

Authority to make the determinations under FAR 9.405-1 is delegated to the SPE and is further delegated to the DSPE.

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

When a subcontract is subject to Government consent, authority to make the written determination required under FAR 9.405-2 consenting to a contractor's use of a subcontractor who is debarred, suspended, or proposed for debarment is delegated to the SPE and is further delegated to the DSPE.

#### **809.406 Debarment.**

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

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

(b) For the purposes of FAR 9.406-1, the DSPE is the debaring official under the Federal Management Regulation at 41 CFR 102-117.295.

(c) Additional factors that a debaring official should consider before arriving at a debarment decision include the following:

(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.

(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.

(3) Whether the contractor conducted internal and external audits as appropriate.

(4) Whether the contractor timely reported to appropriate Government officials any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts.

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

(a) Any individual may submit a recommendation to debar a contractor to the DSPE. The recommendation to debar must be supported with evidence of a cause for debarment listed in FAR 9.406-2. When the DSPE receives a recommendation for debarment, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the recommendation to debar is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for debarment, as listed in FAR 9.406-2, with or without a recommendation, it will conduct a fact-finding and present facts to the debaring official.

(c) If the debaring official finds a basis for proposing a contractor for debarment, the D&S Committee will prepare a notice of proposed debarment under FAR 9.406-3(c) for the signature of the debaring official. The signed notice of proposed debarment 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. In the case of a business, the D&S Committee may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of proposed debarment to the General Services Administration Excluded Parties List System pending a debarment decision.

(d) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D&S Committee will prepare a recommendation and refer the case to the debaring official for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D&S Committee must consider the information in the reply before the D&S Committee makes its recommendation to the debaring official.

(f) The D&S Committee, upon the request of the contractor proposed for debarment, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee to present information or argument in person 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. The D&S Committee shall prepare a report of the proceeding for the debaring official.

(g) If the D&S Committee finds that the contractor's submission in opposition to the 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, then the D&S Committee shall submit to the debaring official the information establishing the dispute of material facts. If the debaring official agrees that

there is a genuine dispute of material facts, the debarring official shall refer the dispute to a designee for resolution pursuant to 809.470.

(h) If there are no disputes over material facts, the debarment action is based on a conviction or civil judgment, or all disputes over material facts have been resolved pursuant to 809.470, the debarring official will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D&S Committee by the contractor. The D&S Committee must update the status of the action on the General Services Administration Excluded Parties List System.

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

(a) Except in an unusual circumstance, the period of debarment will not exceed 3 years. The debarring official will base the period of debarment on the circumstances surrounding the cause for debarment.

(b) The DSPE may remove a debarment, amend its scope, or reduce the period of debarment based on a D&S Committee recommendation if:

- (1) VA has debarred the contractor;
- (2) The action is indicated after the DSPE reviews documentary evidence submitted by or on behalf of the contractor setting forth the appropriate grounds for granting relief. Appropriate grounds include newly discovered material evidence, 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.

#### **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 SPE and is further delegated to the DSPE.

(b) For the purposes of FAR 9.407-1, the DSPE 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 recommendation to suspend a contractor to the DSPE. The recommendation to suspend must be supported with evidence of a cause for suspension listed in FAR 9.407-2. When the DSPE receives a recommendation for suspension, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the

recommendation to suspend is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for suspension, as listed in FAR 9.407-2, with or without a recommendation, it will conduct a fact-finding and present facts and recommendations to the suspending official.

(c) If the suspending official finds a basis for suspending a contractor, the D&S Committee will prepare a notice of suspension under FAR 9.407-3(c) for the signature of the suspending official. The signed notice of suspension 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. In the case of a business, the D&S Committee may send the notice of suspension to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of suspension to the General Services Administration Excluded Parties List System pending completion of investigation and any ensuing legal proceedings.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice of suspension, the D&S Committee must consider the information in the reply before the Committee makes further recommendations to the suspending official. The D&S Committee, upon the request of a suspended contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee to present information or argument in person 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. The D&S Committee shall prepare a report of the proceeding for the suspending official.

(e) In actions not based on an indictment, if the D&S Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the D&S Committee shall submit to the suspending official the information establishing the dispute of material facts. However, the D&S Committee must first coordinate any further proceeding regarding the facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA will 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 that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the suspending official agrees that there is a genuine dispute of material facts, the suspending official 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 fact pursuant to 809.406-3 and 809.407-3 of this chapter. The DSPE 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 hearings shall be conducted in Washington, DC. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the debarring or suspending official. The fact-finder will establish the date for the fact-finding hearing, normally to be held within 45 working days of the submission of the dispute.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative at the fact-finding hearing. The contractor 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. As required by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i), written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the debarring or suspending official, the

Government's representative, and the contractor.

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

#### 809.503 Waiver.

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

#### 809.504 Contracting officer responsibilities.

(a) A contracting officer must determine whether awarding a contract will result in an actual or potential conflict of interest for the contractor.

(1) The contracting officer will make a conflict of interest determination after reviewing information submitted by offerors, evaluating information gathered under FAR 9.506, and exercising his or her own judgment.

(2) In evaluating possible organizational conflicts of interest, the contracting officer may obtain the advice of legal counsel and the assistance of technical specialists.

(b) If the contracting officer determines that there is no way to avoid or mitigate an organizational conflict of interest arising from a contract award, the contracting officer may disqualify the offeror from award under FAR 9.504(e).

(c) Even if awarding a contract will result in an organizational conflict of interest, the contracting officer may request a waiver from his or her HCA if awarding the contract is in the best interests of the Government.

(1) Before granting a waiver request under this paragraph, the HCA must obtain the concurrence of OGC.

(2) If the HCA grants a waiver request, the contracting officer may set contract terms and conditions to reduce any organizational conflict of interest to the greatest extent possible.

(d) In any solicitation for the services addressed at FAR 9.502, the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see 809.507–1(b) and 852.209–70).

#### 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 clause at 852.209–70, Organizational conflicts of interest, must be included in any solicitation for the services addressed in FAR 9.502.

## PART 811—DESCRIBING AGENCY NEEDS

### Subpart 811.0—Definitions

Sec.

811.001 Definitions.

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

811.103 Market acceptance.

811.103–70 Technical industry standards.

811.104 Use of brand name or equal purchase descriptions.

811.104–70 Brand name or equal purchase descriptions.

811.104–71 Purchase description clauses.

811.104–72 Brand name or equal component parts.

811.104–73 Bid samples.

811.104–74 Bid evaluation and award.

811.104–75 Procedure for negotiated procurements.

811.105 Items peculiar to one manufacturer.

811.107 Contract clauses.

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

811.202 Maintenance of standardization documents.

811.204 Contract clause.

#### Subpart 811.4—Delivery or Performance Schedules

811.404 Contract clause.

#### Subpart 811.5—Liquidated Damages

811.501 Policy.

811.503 Contract clause.

#### Subpart 811.6—Priorities and Allocations

811.602 General.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

##### 811.001 Definitions.

For the purposes of this part:

*Brand name product* means a commercial product described by brand name and make or model number or other appropriate nomenclature by which the product is offered for sale to the public by the particular manufacturer, producer or distributor.

*Salient characteristics* means those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are features that are identified in the specifications as a mandatory requirement that a proposed “equal” product or material must possess for the bid to be considered responsive.

### Subpart 811.1—Selecting and Developing Requirements Documents

#### 811.103 Market acceptance.

##### 811.103–70 Technical industry standards.

Where items are required to conform to technical industry standards, such as those adopted by: Underwriters Laboratories, Inc.; Factory Mutual Laboratories; American Gas Association; American Society of Mechanical Engineers; National Electrical Manufacturers Association; American Society of Heating, Refrigerating and Air-Conditioning Engineers; or similar organizations, where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal, or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The contracting officer shall include the provision at 852.211–72, Technical industry standards, in solicitations requiring conformance to technical industry standards unless comparable provisions are contained in the item specification.

#### 811.104 Use of brand name or equal purchase descriptions.

##### 811.104–70 Brand name or equal purchase descriptions.

(a) The specification writer may use purchase descriptions that contain references to one or more brand name products only in accordance with 811.104–71 through 811.104–75.

(b) Purchase descriptions that contain references to one or more brand name products must be followed by the words “or equal,” except when the acquisition of a specific brand name is fully justified under FAR Subpart 6.3 and 806.3. If more than one brand name is acceptable, the contracting officer should list the known acceptable brand name products in the solicitation.

(c) Where a “brand name or equal” purchase description is used, the contracting officer must give bidders an opportunity to offer products other than those specifically referenced by brand

name. Following bid opening or receipt of offers, the contracting officer must determine if non-“brand name” substitute products fully meet the salient characteristics listed in the solicitation.

(d) When using a “brand name or equal” purchase description, the specification writer must set forth those salient physical, functional, or other characteristics of the referenced products that are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, the specification writer must specify this requirement. The purchase description must contain the following information to the extent available:

- (1) Complete common generic identification of the item required.
- (2) Applicable model, make, or catalog number for each brand name product referenced and identity of the commercial catalog in which it appears.
- (3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).
- (4) Any other information necessary to describe the item required.

(e) When necessary to adequately describe the item required, the contracting officer may use an applicable commercial catalog description or pertinent extract if the description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer must insure that a copy of any catalog referenced (except a parts catalog) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (d) of this section, the specification writer must not include in a purchase description either minimum or maximum restrictive dimensions, weights, materials, or other salient characteristics that are unique to a brand name product or that would tend to eliminate competition or other products that are only marginally outside the restrictions. However, the specification writer may include in a purchase description restrictive dimensions, weights, materials, or other salient characteristic if:

- (1) The user determines in writing that the restrictions are essential to the Government’s requirements;
- (2) The specification writer includes the brand name of the product in the purchase description; and,
- (3) The contracting officer makes all other determinations required by 811.105.

(g) The contracting officer must include in the contract file, as appropriate, written justifications for using the “brand name or equal” description, the contracting officer’s determinations, and bidder submissions.

#### **811.104-71 Purchase description clauses.**

(a) When a solicitation uses “brand name or equal” purchase descriptions, the contracting officer must include in the solicitation the clause at 852.211-73, Brand name or equal, and the provision set forth at FAR 52.214-21, Descriptive Literature. The contracting officer must review the requirements at FAR 14.202-5 when using the descriptive literature provision.

(b) When a “brand name or equal” purchase description is included in an invitation for bids, the contracting officer shall insert the following after each item so described in the solicitation, for completion by the bidder:

Bidding on:  
 Manufacturer name \_\_\_\_\_  
 Brand \_\_\_\_\_  
 No. \_\_\_\_\_

#### **811.104-72 Limited application of brand name or equal.**

If the contracting officer determines that the clause at 852.211-73, Brand name or equal, applies to only certain line items of a solicitation, the requirements of 811.104-71(b) apply to those line items and the contracting officer must include a statement in the solicitation as follows:

The clause entitled “Brand name or equal” applies only to the following line items: *[List the line items to which the clause applies]*

#### **811.104-73 Bid samples.**

(a) When a solicitation contains “brand name or equal” purchase descriptions, the contracting officer must not require a bidder who offers brand name products, including component parts, referenced in the descriptions to furnish bid samples of the referenced brand name products.

(b) A solicitation may require the submission of bid samples in the case of a bidder offering “or equal” products. If bid samples are required, the contracting officer must include in the solicitation the provision set forth at FAR 52.214-20, Bid Samples.

(c) A bidder must furnish all descriptive literature in accordance with and for the purpose set forth in the “Brand Name or Equal” clause, 852.211-73(c)(1) and (c)(2), even though bid samples may not be required.

#### **811.104-74 Bid evaluation and award.**

(a) A bid offering products that differ from brand name products referenced in a “brand name or equal” purchase description must be considered for award if the contracting officer determines in accordance with the terms of the clause at 852.211-73, Brand name or equal, that the offered products are clearly identified in the bid and are equal in all material respects to the products specified.

(b) In award documents, the contracting officer must include, or incorporate by reference, an identification of the specific products that the contractor is to furnish. The identification must include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. This requirement also applies when the descriptions of the end items contain “brand name or equal” purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.211-73, Brand name or equal, was applied to the component parts or accessories (see 811.104-72).

#### **811.104-75 Procedure for negotiated procurements.**

(a) The specification writer and contracting officer must use the policies and procedures prescribed in 811.104-70 through 811.104-74 as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The contracting officer may adapt the clause at 852.211-73, Brand name or equal, for use in negotiated procurements. When use of the clause is not practical (as may be the case in unusual and compelling urgency purchases), the contracting officer must inform suppliers that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products are equal in all material respects to the products referenced. The contracting officer must place decisions under this paragraph in writing for the contract file, as appropriate.

#### **811.105 Items peculiar to one manufacturer.**

(a) Except as provided in paragraph (b) of this section, the specification writer must write specifications in accordance with FAR 11.002.

(b)(1) When the specification writer determines that a particular physical or functional characteristic of only one product will meet the minimum requirements of VA (see FAR 11.105) or

that a "brand name or equal" purchase description must be used (see FAR 11.104), the specification writer must identify the item(s) for the contracting officer and do one of the following:

(i) Provide a full written justification of the reason the particular characteristic is essential to the Government's requirements.

(ii) Explain why the "brand name or equal" purchase description is necessary.

(2) The contracting officer makes the final determination whether restrictive specifications or "brand name or equal" purchase descriptions will be included in the solicitation.

#### 811.107 Contract clauses.

(a) Insert the clause at 852.211-70, Service data manuals, paragraph (a), in solicitations and requests for proposals for technical medical and other technical equipment and devices issued by a field facility unless the facility Chief, Engineering Service, indicates that the service data manuals are not needed. The purpose of the clause is to require the manufacturer to provide VA a manual or groups of manuals that will allow for the in-house repair of the equipment purchased.

(b) Insert the clause at 852.211-70, Service data manuals, paragraph (b), in solicitations and requests for proposals for mechanical equipment (other than technical medical and other technical equipment and devices) issued by a field station.

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

##### 811.202 Maintenance of standardization documents.

(a) *Military and departmental specifications.* Contracting officers may, when it is advantageous to VA, use these specifications when procuring supplies and equipment costing less than the simplified acquisition threshold. When purchasing items of perishable subsistence, contracting officers may take into account only those exemptions set forth in paragraphs (b)(2) and (b)(3) of this section.

(b) *Nutrition and Food Service specifications.* (1) VA has adopted for use in the procurement of packinghouse products the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS) and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain

packinghouse products selected from the IMPS especially for VA use, are contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL.

(2) The military specifications for meat and meat products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, must be used by VA only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, may be used when purchasing either from DLA or from local dealers.

(3) Except as authorized in Part 846, a contracting officer must not deviate from the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, and the IMPS without prior approval from the DSPE.

(4) Items of meat, cured pork and poultry purchased under the Subsistence Prime Vendor national contract or other local procurement sources should be purchased via Commercial Item Descriptions (CID) that require all products meet USDA Grading standards and/or the IMPS as applicable.

(c) *Department of Veterans Affairs specifications.* (1) The Director, Publications Staff, is responsible for developing, publishing, and distributing VA specifications covering printing and binding.

(2) VA specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. The contracting officer may requisition facility requirements for these specifications from that source.

(d) *Government paper specification standards.* (1) Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating, must require that the paper stocks be in accordance with the Government Paper Specification Standards issued by the Congressional Joint Committee on Printing.

(2) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases, and boxes must be procured in accordance with Government Printing Office (GPO) specifications and must be procured from the servicing GPO Regional Printing Procurement Office

or, when appropriate, from commercial sources.

(3) There are three types of binding/rebinding: Class A (hard cover); Perfect (glued); and Lumbinding (sewn). The most suitable type of binding must be procured to satisfy the requirements, based upon the intended use of the bound material.

#### 811.204 Contract clause.

Insert the clause at 852.211-75, Product specifications when product specifications are cited in an invitation for bids or a request for proposals.

#### Subpart 811.4—Delivery or Performance Schedules

##### 811.404 Contract clause.

When delivery is required by or on a particular date for f.o.b. destination contracts, the contracting officer must add a statement following the Time of Delivery clause in FAR 52.211-8 that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the contracting officer must add a statement following this clause that the date specified is the date shipment is to be accepted by the carrier.

#### Subpart 811.5—Liquidated Damages

##### 811.501 Policy.

The contracting officer must not routinely include a liquidated damages provision in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions must conform to the criteria in FAR 11.501. In making this decision, the contracting officer must consider whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. The contracting officer must not use a liquidated damages provision for any of the following reasons:

(a) As insurance against selection of a non-responsible bidder.

(b) As a substitute for efficient contract administration.

(c) As a penalty for failure to perform on time.

##### 811.503 Contract clause.

When the contracting officer determines that the Liquidated damages clause prescribed in FAR 52.211-11 or 52.211-12 must be used and where partial performance by the contractor may be to the advantage of the Government, the contracting officer must include the clause in 852.211-74, Liquidated damages, in the contract.

## Subpart 811.6—Priorities and Allocations

### 811.602 General.

(a) Priorities and allocations of critical materials are controlled by the Department of Commerce. Essentially, priorities and allocations of critical materials are restricted to projects having a direct connection with supporting current defense needs. VA is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) When it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist the VA in obtaining critical materials for maintenance and repair projects. The Department of Commerce will also, when possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) A contracting officer having problems acquiring critical materials must ascertain all the facts necessary to enable the Department of Commerce to render assistance to VA in acquiring these materials. The contracting officer must submit a request for assistance to the DSPE containing the following information:

(1) A description of the maintenance and repair project or the new item.

(2) The critical material and the amount required.

(3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.

(4) The VA contract or purchase order number.

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer.

(6) The additional time the contractor claims is necessary to deliver the materials if priority assistance is not provided.

(7) The nature and extent of the emergency that will be generated at the station, such as any of the following:

(i) Damage to the physical plant.

(ii) Impairment of the patient care program.

(iii) Creation of safety hazards.

(iv) Any other pertinent condition that could result because of failure to secure assistance in obtaining the critical materials.

(8) If applicable, a statement that the item required is for use in a construction contract that was

authorized by the Director, Office of Construction and Facilities Management, to be awarded and administered by the facility contracting officer.

## PART 812—ACQUISITION OF COMMERCIAL ITEMS

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

Sec.

812.102 Applicability.

### 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.

812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

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

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

#### 812.102 Applicability.

(a) This part shall be used for the acquisition of supplies and services that meet the definition of commercial items at FAR 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for the solicitation, evaluation, and award prescribed in Parts 813, Simplified Acquisition Procedures, 814, Sealed Bidding, and 815, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies of other parts of this chapter. When a policy in another part of this chapter differs from a policy in this part, this Part 812 applies to the acquisition of commercial items.

### 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.

(a) Regardless of provisions in other parts of the VAAR, contracting officers may use, as appropriate, only those provisions and clauses referred to in this part when acquiring commercial items.

(b) Contracting officers may use the provisions and clauses in the following VAAR sections, as appropriate and in accordance with the prescriptions for the provisions and clauses, in requests for quotations, solicitations, and contracts:

(1) 852.203–70, Commercial advertising.

(2) 852.203–71, Display of Department of Veterans Affairs Hotline poster.

(3) 852.207–70, Report of employment under commercial activities.

(4) 852.209–70, Organizational conflicts of interest.

(5) 852.211–71, Special notice.

(6) 852.211–72, Technical industry standards.

(7) 852.211–73, Brand name or equal.

(8) 852.211–75, Product specifications.

(9) 852.214–70, Caution to bidders—bid envelopes.

(10) 852.214–71, Restrictions on alternate item(s).

(11) 852.214–72, Alternate item(s).

(12) 852.214–73, Alternate packaging and packing.

(13) 852.214–74, Bid samples.

(14) 852.216–70, Estimated quantities.

(15) 852.228–71, Indemnification and insurance.

(16) 852.229–70, Sales and use taxes.

(17) 852.233–70, Protest content/alternative dispute resolution.

(18) 852.233–71, Alternate protest procedure.

(19) 852.237–7, Indemnification and medical liability insurance.

(20) 852.237–70, Contractor responsibilities.

(21) 852.246–70, Guarantee.

(22) 852.246–71, Inspection.

(23) 852.246–72, Frozen processed foods.

(24) 852.252–70, Solicitation provisions or clauses incorporated by reference.

(25) 852.270–1, Representatives of contracting officers.

(26) 852.270–2, Bread and bakery products—quantities.

(27) 852.270–3, Purchase of shellfish.

(28) 852.271–72, Time spent by counselee in counseling process.

(29) 852.271–73, Use and publication of counseling results.

(30) 852.271–74, Inspection.

(31) 852.271–75, Extension of contract period.

(c) When appropriate in accordance with the prescriptions for the clauses, the contracting officer may use the clauses in the following VAAR sections 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:

(1) 852.211–70, Service data manuals.

(2) 852.211–74, Liquidated damages.

(d) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the clause

at 852.271–70, Nondiscrimination in services provided to beneficiaries.

(e) Micro-purchases that use the procedures of this part in conjunction with part 813 do not require clauses unless the contracting officer determines that the use of clauses serves the Government's best interest.

(f) When soliciting for health care resources that are commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151–8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

- (1) 852.273–70, Late offers.
- (2) 852.273–71, Alternative negotiation techniques.
- (3) 852.273–72, Alternative evaluation.
- (4) 852.273–73, Evaluation—health-care resources.
- (5) 852.273–74, Award without exchanges.

(38 U.S.C. 8151–8153)

#### **812.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(a) Contracting officers may tailor solicitations to be inconsistent with customary commercial practice if they prepare and obtain approval of a waiver under paragraph (c) of this section.

(b) The contracting officer must prepare the waiver in accordance with FAR 12.302(c). The waiver is subject to the tailoring prohibitions in FAR 12.302(b)(1) through 12.302(b)(6).

(c) The contracting officer must obtain approval for waivers from the following:

- (1) The Chief, Acquisition Assistance Division, for individual contracts.
- (2) The Chief, Acquisition Program Management Division, for a class of contracts.

(d) Contracting officers must submit waiver requests no later than the solicitation issue date.

(e) Contracting officers must retain approved requests in the contract file.

### **SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

#### **PART 813—SIMPLIFIED ACQUISITION PROCEDURES**

##### **Subpart 813.1—Procedures**

Sec.

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

813.106–3 Award and documentation.  
813.106–70 Oral purchase orders.

##### **Subpart 813.3—Simplified Acquisition Methods**

813.302 Purchase orders.

813.302–5 Clauses.

813.307 Forms.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

##### **Subpart 813.1—Procedures**

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

##### **813.106–3 Award and documentation.**

The contracting officer may record a quotation on an Abstract of Offers (SF 1409 or 1419), the purchase request if space permits, or other supplemental sheet or form, such as VA Form 10–2237b, Request for Dietetic Supplies.

##### **813.106–70 Oral purchase orders.**

When advantageous to VA, the contracting officer may use an oral purchase order for transactions not in excess of \$3,000. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against Federal Supply Schedule contracts. The contracting officer must assign a purchase order number to the transaction. A copy of any electronically generated purchase order may be used as a property voucher and receiving report to document receipt.

##### **Subpart 813.3—Simplified Acquisition Methods**

##### **813.302 Purchase orders.**

##### **813.302–5 Clauses.**

When using the VA Form 90–2138 or 90–2138–ADP for maintenance contracts involving services performed on Government property that have the potential for property damage and liability claims, the contracting officer shall insert in the purchase order the Contractor's Responsibilities clause found at 852.237–70. Applicable maintenance contracts include, but are not limited to, window washing, pest control, and elevator maintenance.

##### **813.307 Forms.**

(a) The following forms provide a purchase or delivery order, vendor's invoice, and receiving report:

- (1) VA Form 90–2138, Order for Supplies or Services.
- (2) VA Form 90–2139, Order for Supplies or Services (Continuation).
- (3) VA Form 90–2138–ADP, Purchase Order for Supplies or Services.
- (4) VA Form 2139–ADP, Order for Supplies and Services (Continuation).

(b) The contracting officer may use the forms specified in paragraphs (a)(1) through (a)(4) of this section instead of OF 347, Order for Supplies or Services, OF 348, Order for Supplies or Services Schedule—Continuation, and SF 1449,

Solicitation/Contract/Order for Commercial Items.

(c) The contracting officer or other properly delegated official (see 801.670–3) may use the following order forms when ordering the indicated medical, dental, and ancillary services totaling up to \$10,000 per authorization when such services are not available under existing contracts:

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record Authorization and Invoice for Outpatient Service.

(d) In authorizing patient travel as set forth in VA manual MP–1, Part II, Chapter 3, the contracting officer or other properly delegated official (see 801.670–3) may use VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, as provided by that manual.

(e) The contracting officer must use SF 182, Request, Authorization, Agreement, and Certification of Training, for procurement of training.

(f) The contracting officer must use VA Form 10–2421, Prosthetics Authorization for Items or Services, for indicated services not in excess of \$300.

#### **PART 814—SEALED BIDDING**

##### **Subpart 814.1—Use of Sealed Bidding**

Sec.

814.104 Types of contracts.

814.104–70 Fixed-price contracts with escalation.

##### **Subpart 814.2—Solicitation of Bids**

814.201 Preparation of invitations for bids.

814.201–6 Solicitation provisions.

814.203 Methods of soliciting bids.

814.203–1 Transmittal to prospective bidders.

814.204 Records of invitations for bids and records of bids.

814.208 Amendment of invitation for bids.

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

814.301 Responsiveness of bids.

814.302 Bid submission.

814.304 Submission, modification, and withdrawal of bids.

##### **Subpart 814.4—Opening of Bids and Award of Contract**

814.401 Receipt and safeguarding of bids.

814.402 Opening of bids.

814.403 Recording of bids.

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814.407-4 Mistakes after award.

814.408 Award.

814.408-70 Award when only one bid is received.

814.408-71 Recommendation for award (construction).

814.409 Information to bidders.

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

## Subpart 814.1—Use of Sealed Bidding

### 814.104 Types of contracts.

#### 814.104-70 Fixed-price contracts with escalation.

When fixed price contracts with escalation are authorized under 816.102(a), a contracting officer must comply with FAR 16.203-1 through 16.203-4.

### Subpart 814.2—Solicitation of Bids

#### 814.201 Preparation of invitations for bids.

(a) An invitation for bids for supplies, equipment, and services must be serially numbered at the time of issue. Numbers assigned locally must consist of the facility or VA National Acquisition Center division number, the serial number of the invitation, and the fiscal year in which the VA facility issues the invitation, e.g., 533-24-07 for the 24th invitation issued by VA facility 533 in Fiscal Year 2007. A series beginning with the number 1 must be started each fiscal year. Numbers assigned from a national register may be sequential, without regard to year, and use whatever numbering system assigned by the national system or VA's Electronic Contract Management System (eCMS). VHA shall use eCMS for all solicitation numbering.

(1) An invitation for bid for supplies, equipment, and services that is numbered locally must be numbered in the series of the year in which it is issued, will be accepted, and will become a contract in the same fiscal year but, because of procurement lead time, will not be performed until the next fiscal year.

(2) An invitation for bid that is numbered locally must be numbered in the next fiscal year series if it is issued in one fiscal year but the contract will become effective and will be performed only in the next fiscal year.

(b) An invitation for a construction contract must bear the applicable invitation for bid number and the project number, if assigned.

(c) An invitation for bid containing a summary bid request must include the following statement:

"The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost 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."

(d) 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 contracting officer must include a provision for the award by group or groups of items in the invitation for bids. This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following apply:

(1) It is desirable to award a minimum number of contracts.

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

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

(e) A solicitation for a construction contract must contain a statement on the order of priority in which VA will award any alternative bid items, based on the relative importance of the items, VA's cost estimate, and the amount of funds available, when the following apply:

(1) VA intends to make a single aggregate award for all items in the solicitation within certain fiscal limitations.

(2) The solicitation asks for prices on an item and alternate item basis.

(f) A bid item schedule in a solicitation issued in compliance with paragraph (e) of this section should be structured substantially as follows:

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2 or Item No. 3, in that order, based on available funding. Offerors should quote a price on each item listed.

Item No. 1—Furnish all labor, material, equipment, etc., to paint Buildings No. 1, 2, and 3: \$\_\_\_\_\_.

Alternate items in order of priority:

Item No. 2—Furnish all labor, material, equipment, etc., to paint Building Nos. 1 and 2: \$\_\_\_\_\_.

Item No. 3—Furnish all labor, material, equipment, etc., to paint Building No. 1: \_\_\_\_\_.

#### 814.201-6 Solicitation provisions.

(a) The contracting officer must place the provision entitled "Caution to Bidders-Bid Envelopes," as set forth in 852.214-70, in all invitations for bids where bid submissions are by other than electronic means.

(b) In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer must define the extent to which VA will authorize and consider

alternate bids. VA will consider for acceptance an alternate specified on construction projects only as a part of the basic item.

(1) When VA will consider an alternate item only if no bids or insufficient bids are received on an item desired, the contracting officer must include the provision set forth in 852.214-71, Restrictions on alternate item(s), in the invitation.

(2) When VA will consider an alternate item on an equal basis with the item specified, the contracting officer must include the provision set forth in 852.214-72, Alternate items, in the invitation.

(3) In addition to the provision referenced in paragraph (b)(1) or (2) of this section, the contracting officer must include the provision set forth in 852.214-73, Alternate packaging and packing, in the invitation when bids will be allowed on different packaging, unit designation, etc.

(c) When the contracting officer determines that samples are necessary to the proper awarding of a contract, the contracting officer must include the provision set forth in 852.214-74, Bid samples, in the solicitation, along with the provision in FAR 52.214-20, Bid samples.

#### 814.203 Methods of soliciting bids.

##### 814.203-1 Transmittal to prospective bidders.

The contracting officer should include either a bid envelope or OF 17, Sealed Bid Label, with each invitation for bids furnished by mail or hand delivered to prospective bidders.

##### 814.204 Records of invitations for bids and records of bids.

(a) The issuing office must establish and maintain a single register on a fiscal year basis for all solicitations. For each invitation to bid or request for proposal, the register must include the following:

(1) Bid or proposal number.

(2) Date of issue.

(3) Date of opening.

(4) Commodity or service involved.

(5) Disposition (i.e., contract number or purchase order number or, when applicable, no award).

(b) Maintenance of the contract file prescribed by Part 804 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FAR 14.204(b).

##### 814.208 Amendment of invitation for bids.

The contracting officer must send amendments to holders of drawings and specifications by certified mail, return receipt requested, or any other method that provides evidence of receipt. The

contracting officer may send amendments by telegram, facsimile, or other method of rapid delivery that provides evidence of receipt, if time does not permit mailing.

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

#### **814.301 Responsiveness of bids.**

Where a contracting officer cannot administratively determine, in accordance with FAR 14.301, the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer must submit the matter through the DSPE to the Comptroller General for a decision. The submission must include copies of all pertinent papers.

#### **814.302 Bid submission.**

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addressee designated in the bid invitation before the time set for opening.

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

(a) A notification to late bidders must specify the final date by which VA must receive evidence. This date must be within the time allowed by the apparent low bidder for acceptance of the low bidder's bid.

(b) All bids received by mail or delivered in person by the bidder (or telegram where authorized) must be time and date stamped immediately upon receipt at the VA facility mail room and in the office of the addressee designated in the invitation.

### **Subpart 814.4—Opening of Bids and Award of Contract**

#### **814.401 Receipt and safeguarding of bids.**

The contracting officer is designated as the official to open bids for identification, as provided in FAR 14.401.

#### **814.402 Opening of bids.**

(a) The contracting officer must serve as, or designate, a bid opening officer, and must also designate a recorder.

(b) If a bid bond is required, the bid opening officer must read aloud the form and amount of bid security and the name of the surety. The recorder must record this information.

#### **814.403 Recording of bids.**

(a) The recorder must transcribe the information required for bid evaluation on the appropriate Abstract of Offers form (SF 1409 or OF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic

Supplies, provided that any supplemental sheets or forms are covered by one of the forms authorized for recording bid or price data.

(b) The bid opening officer must comply with the instructions in FAR 14.403 and certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeouts, or changes in price are noted at the time of bid opening, a statement to that effect must also be included on, or attached to, the abstract or record of bids.

#### **814.404 Rejection of bids.**

##### **814.404-1 Cancellation of invitations after opening.**

(a) For each invitation to bid that VA cancels or for which it receives no bid, the contracting officer must do the following:

(1) File a copy of the invitation for bids, as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, in a separate folder identified by the invitation number.

(2) Annotate the abstract to show why an award was not made.

(3) Retain the folders for the current and two succeeding fiscal years.

(b) The HCA may approve cancellation of invitations for bid after opening and may approve completion of the acquisition after cancellation, as provided in FAR 14.404-1(e). The contracting officer must submit a Determination and Finding to the HCA for approval and signature.

##### **814.404-2 Rejection of individual bids.**

(a) When a contracting officer finds a bid that is being considered for an award is incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. The determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When VA receives a single bid in response to a solicitation, the contracting officer must not reject the offer simply because it specifies a bid acceptance time that is shorter than that

contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer is a compelling reason for rejection; however, the contracting officer must first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

(c) In those cases where VA receives more than one bid, the contracting officer must reject as nonresponsive an individual bid that is not in compliance with the Government's bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.

##### **814.404-70 Questions involving the responsiveness of a bid.**

If a contracting officer cannot resolve a question involving the responsiveness of a bid, the contracting officer may submit the question to the Comptroller General through the DSPE.

#### **814.407 Mistakes in bids.**

##### **814.407-3 Other mistakes disclosed before award.**

(a) In accordance with FAR 14.407-3(e), the authority of the Secretary to make the administrative determinations set forth in FAR 14.407-3(a), (b), (c), and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the DSPE. This delegation in no way impairs the delegations contained in Unpublished Decision of the Comptroller General B-122003 dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid before award, after complying with the provisions of FAR 14.407-3, the contracting officer must submit the complete file to the DSPE for an administrative determination. Based upon the evidence submitted, the DSPE shall determine the action the contracting officer is to take. The contracting officer may make no award until the DSPE makes a determination.

##### **814.407-4 Mistakes after award.**

(a) When a contracting officer corrects a mistake in bid under FAR 14.407-4(a), the contracting officer must forward a copy of the contract amendment or supplemental agreement and a copy of the contracting officer's determination, to the DSPE.

(b) For mistakes in a bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.407-4, must be forwarded to OGC through the DSPE, Acquisition Resources Service, for legal coordination. The DSPE shall transmit the results of this coordination to the contracting officer, who will make the

final determination on the alleged mistake in bid after award.

(c) The DSPE, Acquisition Resources Service, must maintain the agency records of mistakes in bids after award required by FAR 14.407-4.

**814.408 Award.**

**814.408-70 Award when only one bid is received.**

(a) When VA receives only one bid in response to an invitation for bids, the contracting officer may consider and accept the bid if all of the following apply:

(1) The specifications used in the invitation were not restrictive.

(2) VA solicited adequate competition.

(3) The price is reasonable.

(4) The bid is otherwise in accordance with the invitation for bids.

(b) The contracting officer must make the determination in writing, and include it in the contract file.

**814.408-71 Recommendation for award (construction).**

(a) For Central Office contracts, the Director, Office of Construction and Facilities Management, must analyze all bids received and submit a memorandum to the Secretary recommending award or other disposition of the project. A copy of each of the following must accompany the memorandum:

(1) The invitation.

(2) Each bid received.

(3) The abstract.

(4) Any other pertinent data.

(b) For facility-level contracts, the Chief, Engineering Service, must analyze all bids received and submit a memorandum recommending award or other disposition of the project to the contracting officer. The contracting officer alone must make the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor.

**814.409 Information to bidders.**

(a) An employee of VA may not disclose information as to probable acceptance or rejection of any offer to any bidder or other person outside of VA, except as authorized by the FAR.

(b) Except as provided in paragraphs (c) and (d) of this section, information about performance under a contract or an accepted bid is not public information and will be released to persons outside of VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer

may furnish information on performance under a contract to those having a legitimate interest, such as sureties, banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information must be furnished through OGC.

**PART 815—CONTRACTING BY NEGOTIATION**

**Subpart 815.3—Source Selection**

Sec.

815.303 Responsibilities.

**Subpart 815.4—Contract Pricing**

815.404 Proposal analysis.

815.404-1 Proposal analysis techniques.

815.404-2 Information to support proposal analysis.

**Subpart 815.6—Unsolicited Proposals**

815.604 Department points of contact.

815.606 Department procedures.

815.606-1 Receipt and initial review.

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

**Subpart 815.3—Source Selection**

**815.303 Responsibilities.**

The authority of the Secretary to appoint an individual other than the contracting officer to serve as the source selection authority for a particular acquisition or group of acquisitions is delegated to the SPE and is further delegated to the DSPE. If an HCA wishes to designate an individual other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the HCA shall prepare a request and justification and shall submit the request through channels to the DSPE for approval.

**Subpart 815.4—Contract Pricing**

**815.404 Proposal analysis.**

**815.404-1 Proposal analysis techniques.**

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See 801.602-70.)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum,

the items set forth in FAR 15.404-1(e)(2).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre-award audit.

**815.404-2 Information to support proposal analysis.**

In evaluating start-up and other non-recurring costs, the contracting officer must determine the extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future noncompetitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

**Subpart 815.6—Unsolicited Proposals**

**815.604 Department points of contact.**

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposal or inquiries to the following:

(a) Facility level unsolicited proposals must be referred to the HCA for the field facility.

(b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.

(c) Proposals to VA Central Office must be referred to the Director, Acquisition Operations Service (049A3).

**815.606 Department procedures.**

(a) The VA contact point will do the following:

(1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.

(2) In consultation with such technical/professional offices, the VA contact point will furnish the potential offeror the information specified in FAR 15.604 and any other information that might be of assistance to the potential offeror.

(b) The contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

(c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.605. If required information is not submitted, the contact point will:

- (1) Determine if FAR 15.604 requires advance guidance;
- (2) Determine whether a comprehensive evaluation prescribed by FAR 15.606–2 is appropriate and, if so, request that the offeror provide the necessary information; and,
- (3) Establish an estimated due date for completion of the review process.

#### **815.606–1 Receipt and initial review.**

(a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e., the proposal complies with the requirements in FAR 15.606–1(a) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with FAR 15.609 has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

- (1) The date the proposal was received.
- (2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.
- (3) A description of the proposal.
- (4) The offices requested to evaluate the proposal and the date the offices are requested to return their evaluations.
- (5) The date the reviewing offices finalize their respective evaluations.
- (6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in FAR 15.607(a)(1) through (4). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE (049A5) before the contact point, if warranted as a contracting officer, or an appropriate contracting officer begins negotiation on proposals. The contact point must provide the DSPE (049A5) all necessary documentation supporting the noncompetitive negotiation, including any justification and approval required by FAR Subpart 6.3 and the results of any synopsis required by FAR Subpart 5.2. The DSPE (049A5) will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.

## **PART 816—TYPES OF CONTRACTS**

### **Subpart 816.1—Selecting Contract Types**

Sec.  
816.102 Policies.

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

816.504 Indefinite-quantity contracts.  
816.505 Ordering.

### **Subpart 816.70—Unauthorized Agreements**

816.7001 Letters of availability.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

### **Subpart 816.1—Selecting Contract Types**

#### **816.102 Policies.**

(a) Contracting officers must obtain technical review of solicitations that include a clause that provides for economic price adjustment specified in FAR 16.203–4 or any locally developed clause (see FAR 16.203–4(d)(2) and 801.602–72(d)). The request for approval must include a clearly stated need for the clause.

(b) The contracting officer must obtain the approval of the Director, Acquisition Resources Service (049A5), VA Central Office, before issuing a solicitation or awarding a contract that includes time-and-material or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds \$100,000. See 801.602–71 for technical review requirements. Excluded from this requirement are time-and-material or labor-hour solicitations or proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair of storm damage, etc. (i.e., where FAR 6.302–2 applies).

(c) Except as provided in FAR 32.703–3, a contract that involves a direct obligation of appropriations and lasts for more than one year from the beginning of the contract period must provide that:

(1) The contract applies to the period stated in the contract, subject to availability of funds; and

(2) The contractor will not perform any service under the contract after September 30 of each fiscal year (or beyond the period of the basic contract or any authorized option if the contract crosses fiscal years as provided in FAR 32.703–3(b)) unless the contractor obtains specific authorization from the contracting officer.

(d) A/E contracts, construction contracts, or professional engineer contracts, financed by “no year” appropriations, are not subject to the

requirements of paragraph (c) of this section.

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

#### **816.504 Indefinite-quantity contracts.**

(a) Except as provided in paragraphs (b), (c), and (d) of this section, when the contracting officer cannot determine definite quantities to be acquired under a solicitation and intends to issue a solicitation for estimated quantities, the contracting officer shall insert the clause at 852.216–70, Estimated quantities.

(b) The contracting officer shall insert the Alternate I clause at 852.216–70 in solicitations for bulk coal.

(c) The contracting officer shall insert the Alternate II clause at 852.216–70 in solicitations for estimated quantities of orthopedic, prosthetic, and optical supplies.

(d) The contracting officer shall insert the Alternate III clause at 852.216–70 in solicitations for monuments and headstones.

#### **816.505 Ordering**

The task order contract and delivery order ombudsman for VA is the Associate Deputy Assistant Secretary for Acquisitions (see FAR 16.505(b)(5)). Contracting officers may obtain the name, telephone number, facsimile number, and e-mail address of the current Associate Deputy Assistant Secretary for Acquisitions by contacting: The Office of Acquisitions (049A), VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

### **Subpart 816.70—Unauthorized Agreements**

#### **816.7001 Letters of availability.**

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier that primarily seeks to reserve a place on the supplier's production or delivery schedule for long lead-time items. A letter of availability usually indicates products or services being considered for procurement. A supplier should not construe a letter of availability as a commitment. Prospective contractors sometimes solicit letters of availability or the letters may originate from Government personnel. A letter of availability differs from a letter contract, which is specifically authorized in FAR 16.603.

(b) *Policy.* (1) For the following reasons, contracting officers may not use letters of availability unless the DSPE specifically authorizes them to do so:

(i) Letters of availability often cause potential contractors to initiate costly

preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of VA, the Government may be bound by the action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures that may not be recovered from the Government. In this instance, the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 1341).

(2) Contractors need access to procurement information as soon as possible to make timely preparations. Therefore, procurement personnel should act as efficiently and expeditiously as possible on all procurement actions.

## **PART 817—SPECIAL CONTRACTING METHODS**

### **Subpart 817.1—Multi-year Contracting**

Sec.

817.105 Policy.

817.105-1 Uses.

### **Subpart 817.2—Options**

817.202 Use of options.

817.204 Contracts.

### **Subpart 817.4—Leader Company Contracting**

817.402 Limitations.

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

### **Subpart 817.1—Multi-year Contracting**

#### **817.105 Policy.**

#### **817.105-1 Uses.**

(a) Under 38 U.S.C. 114, VA contracting officers may enter into multi-year contracts for supplies and services not to exceed 5 years (unless otherwise authorized by statute), provided the Secretary or designee makes the following determinations:

(1) Appropriations are available for obligation to pay for the total payments for the fiscal year in which the contract is awarded plus the estimated amount of any cancellation charges.

(2) The contract serves the best interest of the Government by:

- (i) Reducing cost;
- (ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance; and

(iv) Encouraging effective competition.

(3) That, during the contract period:

(i) Demand for the supplies or services will continue;

(ii) Substantial changes in demand for supplies and services in terms of quantity or rate of delivery are unlikely; and

(iii) Specifications for the supplies or services will remain reasonably stable.

(4) The risk of the contractor's inability to perform under the terms and conditions of the contract is low.

(5) A multi-year contract will not inhibit competition from small businesses.

(6) For a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, that there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b) The Secretary has delegated authority to make the determinations specified in 817.105-1(a) as follows:

(1) HCAs may make the above determinations and approve contracts that do not require legal/technical reviews under 801.602-70 and that do not contain a first year cancellation ceiling exceeding 20 percent of the contract value over the full multi-year term.

(2) Authority to make the above determinations and to approve all other proposed multi-year contracts is delegated to the SPE and is further delegated to the DSPE. For approval purposes, the HCA will justify and document the use of a multi-year contract against each of the criteria specified in paragraphs (a)(1) through (a)(6) of this section and forward to the DSPE for approval. The justification must explain the cancellation ceiling and the method used to calculate that ceiling. The justification also must explain the advantages of multi-year contracts over other alternative methods, e.g., option year contracts.

(c) The contracting officer must develop the cancellation ceilings in accordance with FAR 17.106-1. (38 U.S.C. 114)

### **Subpart 817.2—Options**

#### **817.202 Use of options.**

All solicitations developed under Office of Management and Budget Circular A-76 (Revised) cost comparisons will provide for four one-

year renewal options as prescribed in FAR Subpart 17.2. The contracting officer must forward requests to use less or more than the prescribed contract period for Circular A-76 (Revised) cost comparisons to the DSPE for approval.

### **817.204 Contracts.**

(a) The contracting officer must obtain the approval of the DSPE before awarding a contract that includes options exceeding the 5-year limitation specified in FAR 17.204(e). This requirement does not apply to contracts to be awarded by or on behalf of the VA Office of the Inspector General. The request for approval must include the following:

(1) Supporting documentation, rationale, and justifications for the use of options (see FAR 17.205) and for exceeding the 5-year limitation.

(2) Documentation that the contracting officer has considered and addressed the limitations specified in FAR 17.202(b) and (c).

(b) Solicitations that require technical review in accordance with 801.602-71 through 801.602-73 shall be submitted for review concurrently as provided therein.

### **Subpart 817.4—Leader Company Contracting**

#### **817.402 Limitations.**

(a) Except as provided in paragraph (b) of this section, the Government shall not initiate or execute leader company contracts.

(b) The DSPE may designate a contracting officer to enter into a leader company contract for the benefit of VA and the Government. The DSPE must designate a contracting officer by name for a specific contract. The named contracting officer will submit the proposed contract, with a determination and finding, for legal review in accordance with 801.602-75.

## **SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

### **PART 819—SMALL BUSINESS PROGRAMS**

#### **Subpart 819.2—Policies**

Sec.

819.201 General policy.

819.202 Specific policies.

819.202-1 Encouraging small business participation in acquisitions.

819.202-5 Data collection and reporting requirements.

819.202-70 HCA responsibilities.

819.202-71 Additional contracting officer responsibilities.

819.202-72 Order of precedence.

**Subpart 819.5—Set-Asides For Small Business**

- 819.502 Setting aside acquisitions.  
 819.502-2 Total small business set-asides.  
 819.502-3 Partial set-asides.

**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.

**Subpart 819.8—Contracting with the Small Business Administration (The 8(a) Program)**

- 819.800 General.

**Subpart 819.70—Veteran-Owned and Operated Small Businesses**

- 819.7001 Policy.

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

**Subpart 819.2—Policies****819.201 General policy.**

The Director, Office of Small and Disadvantaged Business Utilization (OSBDU), is designated as the official responsible for making the determination required by FAR 19.201(f).

**819.202 Specific policies.****819.202-1 Encouraging small business participation in acquisitions.**

Contracting officers may negotiate payment terms of less than 30 calendar 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 OSBDU 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. OSBDU 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 OSBDU 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 OSBDU 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, OSBDU will make a final determination on the goal assignment.

(f) Accomplishment of goals will be determined by OSBDU 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.

**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 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 819.8—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, OSDBU (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDBU 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—Veteran-Owned and Operated Small Businesses**

#### **819.7001 Policy.**

(a) The Small Business Act directs the SBA to give "special consideration" to veterans of the Armed Forces in all SBA programs. It is the policy of VA to encourage participation by all veteran-owned and operated small businesses in VA acquisitions.

(b) All VA facilities having procurement requirements for which veteran-owned small businesses are known sources must take affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

### **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—Labor Standards for Contracts Involving Construction**

822.406 Administration and enforcement.  
822.406-11 Contract terminations.

**Authority:** 29 CFR 5.15(d); 40 U.S.C. 121(c); 48 CFR 1.301-1.304.

#### **Subpart 822.3—Contract Work Hours and Safety Standards Act**

#### **822.304 Variations, tolerances, and exemptions.**

When issuing a contract for nursing home care, a contracting officer may exempt a contractor from certain requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) regarding the payment of overtime (see 29 CFR 5.15(d)(2) and 852.222-70).

#### **822.305 Contract clause.**

The contracting officer shall insert the clause at 852.222-70, Contract Work Hours and Safety Standards Act—nursing home care contract supplement, in solicitations and contracts for nursing home care when the FAR clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, is included.

#### **Subpart 822.4—Labor Standards for Contracts Involving Construction**

#### **822.406 Administration and enforcement.**

#### **822.406-11 Contract terminations.**

(a) Contracting officers must submit any proposed termination of a contract based on violations of the labor standard

provisions of the contract to OGC for review and comment prior to taking final action. The submittal must include a detailed explanation of the facts and circumstances involved. Contracting officers, except those in the Office of Construction and Facilities Management, shall forward the submittal to OGC through the DSPE. Contracting officers in the Office of Construction and Facilities Management shall forward the submittal to OGC through the Director, Office of Construction and Facilities Management.

(b) If the contract is to be terminated, the DSPE or the Director, Office of Construction and Facilities Management, must submit the reports required by 29 CFR 5.7(d) over the signature of the SPE.

### **PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

#### **Subpart 824.1—Protection of Individual Privacy**

Sec.

824.102 General.

#### **Subpart 824.2—Freedom of Information Act**

824.203 Policy.

**Authority:** 38 CFR 1.550-1.559 and 1.575-1.584; 40 U.S.C. 121(c), and 48 CFR 1.301-1.304.

#### **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.

#### **Subpart 824.2—Freedom of Information Act**

#### **824.203 Policy.**

VA rules implementing the Freedom of Information Act are in 38 CFR 1.550 through 1.559.

### **PART 825—FOREIGN ACQUISITION**

#### **Subpart 825.1—Buy American Act—Supplies**

Sec.

825.103 Exceptions.

825.104 Nonavailable articles.

#### **Subpart 825.2—Buy American Act—Construction Materials**

825.202 Exceptions.

825.205 Post-award determinations.

#### **Subpart 825.6—Trade Sanctions**

825.602 Exceptions.

#### **Subpart 825.8—Other International Agreements and Coordination**

825.870 Technical assistance.

**Subpart 825.9—Customs and Duties**

825.902 Procedures.  
825.902–70 Technical assistance.

**Subpart 825.10—Additional Foreign Acquisition Regulations**

825.1001 Waiver of right to examination of records.

**Subpart 825.11—Solicitation Provisions and Contract Clauses**

825.1102 Acquisition of construction.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

**Subpart 825.1—Buy American Act—Supplies****825.103 Exceptions.**

(a) *Public Interest.* When a contracting officer believes that a determination that domestic preference would be inconsistent with the public interest is necessary under FAR 25.103(a), the contracting officer must submit the request for determination to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. The request for determination must contain all the facts and other pertinent information upon which a determination may be made.

(b) *Non-availability.* (1) For each determination of non-availability made in accordance with FAR 25.103(b)(2)(i), the HCA must do the following:

(i) Factually support the determination and include the supporting facts in the contract file.

(ii) Forward a copy of the determination, along with supporting documentation, to the DSPE.

(2) If the HCA believes that the non-availability of an article is likely to affect future acquisitions, include a recommendation that a copy of the determination and supporting documentation be forwarded to the Civilian Agency Acquisition Council (CAAC) for possible addition to the list of non-available articles in FAR 25.104. The DSPE will decide whether to submit the material to the CAAC.

**825.104 Nonavailable articles.**

The following items are added to the list of nonavailable articles contained in FAR 25.104:

Glass, lead  
Insulin, human

**Subpart 825.2—Buy American Act—Construction Materials****825.202 Exceptions.**

(a) When a determination is required under FAR 25.202(a)(1), the contracting officer must submit the request for determination to the DSPE for submission to the SPE, who will

forward the request to the Secretary. The submission must contain all the facts and other pertinent information necessary for the Secretary to make a determination.

(b) For each determination of non-availability that the HCA makes in accordance with FAR 25.202(a)(2), the HCA must do the following:

(1) Factually support the determination in writing and include the determination in the contract file.

(2) Forward a copy of the determination, along with supporting documentation, to the Director, Office of Construction and Facilities Management, through the DSPE.

(3) If the HCA believes that the non-availability of an article is likely to affect future acquisitions, include a recommendation that a copy of the determination and supporting documentation be forwarded to the Civilian Agency Acquisition Council (CAAC) for possible addition to the list of non-available articles in FAR 25.104. The DSPE will decide whether to submit the material to the CAAC.

**825.205 Post-award determinations.**

A post-award determination that an exception to the Buy American Act applies, as provided in FAR 25.205(c), will be made in accordance with FAR 25.202 and 825.202.

**Subpart 825.6—Trade Sanctions****825.602 Exceptions.**

When the contracting officer determines it to be in the best interest of the Government, the contracting officer may request an exception to the requirements of FAR 25.601 from the Secretary through the DSPE and the SPE. Each such request must be fully justified and include all pertinent facts, as provided in FAR 25.602(b). The SPE is responsible for notifying the U.S. Trade Representative of approved requests, as required by FAR 25.602(b)(2).

**Subpart 825.8—Other International Agreements and Coordination****825.870 Technical assistance.**

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside of the United States by contacting the Executive Director and Chief Operating Officer, VA National Acquisition Center.

**Subpart 825.9—Customs and Duties****825.902 Procedures.****825.902–70 Technical assistance.**

Should the regulations contained in FAR Subpart 25.9 be inadequate to meet the particular needs of the contracting officer in clearing items through customs and/or obtaining duty-free entry of goods, the contracting officer should contact the nearest U.S. Customs and Boarder Protection office for technical assistance. The location of the nearest office can be found at <http://www.customs.gov/xp/cgov/toolbox/contacts/cmcs/>.

**Subpart 825.10—Additional Foreign Acquisition Regulations****825.1001 Waiver of right to examination of records.**

(a) The contracting officer must prepare proposed determinations and findings to use either of the following:

(1) Alternate I of the FAR clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

(2) Alternate III of the FAR clause at 52.215–2, Audit and Records—Negotiation.

(b) The contracting officer must submit the determinations and findings to the DSPE for submission to the SPE, who will forward the request to the Secretary for the signature, as provided in FAR 25.1001(a)(2)(iii). The submission must include all appropriate documentation.

(c) The Secretary, upon concurring with the contracting officer's proposed determination and findings, will, if required by FAR 25.1001(a)(2)(iii), forward the document to the Comptroller General for concurrence.

(d) The completed determination and findings will be made part of the contract file.

**Subpart 825.11—Solicitation Provisions and Contract Clauses****825.1102 Acquisition of construction.**

The Buy American Act (41 U.S.C. 10a–d), except as modified by various trade agreements (see FAR Part 25), requires that only domestic construction material be used in the performance of contracts for construction. For solicitations and contracts for construction that contain a FAR clause related to the Buy American Act, the contracting officer shall insert the applicable VAAR clause, with or without an alternate, as shown in Table 825.1102:

TABLE 825.1102

FAR clause	VAAR clause to be used
FAR 52.225-9, Buy American Act—Construction Materials .....	852.236-89, Buy American Act.
FAR clause 52.225-11, Buy American Act—Construction Materials under Trade Agreements, without its Alternate I (see FAR 25.1102(c)).	852.236-89, Buy American Act, with its Alternate I.
FAR clause 52.225-11, Buy American Act—Construction Materials under Trade Agreements, with its Alternate I (see FAR 25.1102(c)(3)).	852.236-89, Buy American Act, with its Alternate II.

**Subchapter E—General Contracting Requirements**

**PART 828—BONDS AND INSURANCE**

**Subpart 828.1—Bonds and Other Financial Protections**

- Sec.
- 828.101 Bid guarantees.
- 828.101-2 Solicitation provision or contract clause.
- 828.101-70 Safekeeping and return of bid guarantee.
- 828.106 Administration.
- 828.106-6 Furnishing information.
- 828.106-70 Bond premium adjustment.

**Subpart 828.2—Sureties and Other Security for Bonds**

- 828.203 Acceptability of individual sureties.
- 828.203-7 Exclusion of individual sureties.

**Subpart 828.3—Insurance**

- 828.306 Insurance under fixed-price contracts.

**Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts**

- 828.7100 Scope of subpart.
- 828.7101 Approval for indemnification.
- 828.7102 Extent of indemnification.
- 828.7103 Financial protection.

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

**Subpart 828.1—Bonds and Other Financial Protections**

**828.101 Bid guarantees.**

**828.101-2 Solicitation provision or contract clause.**

When a bid bond is required for supplies or services, the phrase “any cost of acquiring the work” in paragraph (e) of the Bid Guarantee clause in FAR 52.228-1 may be modified to refer to the cost of “supplies,” “services,” etc.

**828.101-70 Safekeeping and return of bid guarantee.**

(a) The contracting officer must retain, in a safe, certified checks or other negotiable security provided as bid security for the three lowest acceptable bids. After the contract and contract bonds have been signed and approved, the contracting officer must return the certified checks or other negotiable securities either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that will provide evidence that the bidder received the security.

(b) The contracting officer should promptly return certified checks or other negotiable security furnished in support of bids, other than those determined to be the three lowest acceptable bids, to the respective bidders either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that will provide evidence that the bidder received the security.

(c) The contracting officer will not return commercial bid bonds unless specifically requested to do so by the bidders. If any of the three low bidders request the return of a commercial bid bond, the contracting officer will not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

**828.106 Administration.**

**828.106-6 Furnishing information.**

The contracting officer for the applicable contract will furnish copies of payment bonds to a requestor under the provisions of FAR 28.106-6(c).

**828.106-70 Bond premium adjustment.**

When performance and payment bonds or payment protection are required, the contract must contain the clause in 852.228-70, Bond premium adjustment.

**Subpart 828.2—Sureties and Other Security for Bonds**

**828.203 Acceptability of individual sureties.**

**828.203-7 Exclusion of individual sureties.**

The DSPE may make the determinations referenced in FAR 28.203-7:

- (a) To exclude individuals from acting as surety on bonds; and
- (b) To accept bonds from individuals named on the Excluded Parties List System.

**Subpart 828.3—Insurance**

**828.306 Insurance under fixed-price contracts.**

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, must contain the provision in 852.228-71, Indemnification and insurance.

(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.

**Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts**

**828.7100 Scope of subpart.**

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts covering medical research or development that involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties that would not otherwise exist by law.

(c) 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. (38 U.S.C. 7317)

**828.7101 Approval for indemnification.**

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) Contracting officers must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. (38 U.S.C. 7317)

**828.7102 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 828.7103.

(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)

**828.7103 Financial protection.**

(a) A contractor must 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.

(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)

**PART 829—TAXES**

Sec.

829.000 Scope of part.

**Subpart 829.2—Federal Excise Taxes**

829.202 General exemptions.

829.202–70 Tax exemptions for alcohol products.

**Subpart 829.3—State and Local Taxes**

829.302 Application of State and local taxes to the Government.

829.302–70 Purchases made from patients' funds.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

**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****829.202 General exemptions.****829.202–70 Tax exemptions for alcohol products.**

(a) *General.*

(1) VA is permitted to procure spirits to be used for non-beverage purposes free of tax under the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR 19.538 and 19.539, 20.241 through 20.246, 22.161 and 22.162, 22.171 through 22.176, 24.293, and 25.181 through 25.185). The use of tax-free alcohol, whiskey, beer, wine, and denatured spirits for non-beverage purposes shall include, but is not limited to, medicinal and scientific purposes.

(2) The Executive Director and Chief Operating Officer, National Acquisition Center, and the Head of the Contracting Activity may sign application permits on Department of Treasury-TTB Form 5150.33, Spirits for Use of The United States. This authority may not be delegated.

(b) *Whiskey, alcohol, and denatured alcohol.*

(1) The contracting officer may obtain application forms for tax-free purchases from the TTB Distribution Center, P.O. Box 5950, Springfield, VA 22150–5950. The completed forms must be submitted to the Associate Director (Compliance Operations), Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20226.

(2) 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. A copy of the current ATF Form 1444 or TTB Form 5150.33 must 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.

(3) Contracting officers may make purchases of excise tax-free whiskey and alcohol only from qualified distillery plants or bonded dealers. The accountable officer must ensure that accurate records of all receipts, usage, and destruction of tax-free distilled spirits are maintained at each medical center and must conduct a semi-annual physical inventory of the tax-free alcohol in the possession of the medical center (see 27 CFR 22.161 and 22.162).

(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.

(d) *Beer.* The contracting officer may procure tax-free beer only from licensed breweries and only when such product is prescribed for patients' therapeutic use.

(1) The contracting officer must submit an application for a TTB permit to purchase tax-free beer in letter form to the Director of the nearest TTB Regional Office or to the Director, Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20226. The following information must be included:

(i) Name and address of facility.

(ii) Specific purpose for which the beer will be used.

(iii) Quantity proposed to buy each month, year, etc.

(iv) Name and address of brewery.

(v) Copy of document authorizing the head of the contracting activity to sign the request (i.e., paragraph (a)(2) of this section).

(2) The contracting officer must obtain a separate permit for each brewery from which beer is to be purchased.

**Subpart 829.3—State and Local Taxes****829.302 Application of State and local taxes to the Government.**

(a) If a vendor refuses to sell at a price exclusive of the State and local tax, the contracting officer must use Standard

Form (SF) 1094, U.S. Tax Exemption Certificate, as a basis for billing taxing authorities for a refund of taxes paid.

(b) A contracting officer may not furnish an SF 1094 to a vendor or use SF 1094 to claim reimbursement from the taxing authority when the total amount of State and local tax on any one purchase is \$10 or less.

**829.302-70 Purchases made from patients' funds.**

The contracting officer shall insert the clause at 852.229-70, Sales or use taxes, in solicitations and contracts when items are to be purchased solely from the personal funds of patients.

**PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES**

**Subpart 831.70—Contract Cost Principles and Procedures**

Sec.

831.7000 Scope of subpart.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

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.

831.7001-6 Consumable instructional supplies.

831.7001-7 Reimbursement for other supplies and services.

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

**Subpart 831.70—Contract Cost Principles and Procedures**

**831.7000 Scope of subpart.**

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type 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").

**831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.**

**831.7001-1 Tuition.**

(a) Except as provided in this section, when the contractor has a customary cost of tuition, the charge to VA may not exceed that charged to similarly circumstanced nonveteran students. If the contractor has more than one standard charge for the same service, the charge to VA must be the lowest price that is offered or published for the entire course, semester, quarter, or term.

(b) VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other 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 circumstanced nonveterans 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.

(c) When Federal funds pay the total cost of instruction, or grants from the Federal Government pay a portion of the cost (e.g., Smith-Hughes or other laws, excluding Federal Land Grant Funds), that subsidy will be taken into consideration in determining the charge to VA. The term "Federal Land Grant Funds" refers to those funds received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) A veteran who is participating in a Chapter 31 program and receives an award of a fellowship, scholarship, grant-in-aid, assistantship, or similar award will have that award treated according to the following requirements:

(1) If the award limits its use to payment of tuition, fees, or any charge that VA normally pays as part of a Chapter 31 program, VA will pay the portion of the charges remaining after applying the award.

(2) In all other cases, VA will pay the full amount of the tuition, fees, or other charges.

(e) If a State or other Government authority waives a veteran's tuition and fees, VA will reduce its payment of those charges by the amount of the waiver.

(f) VA will pay enrollment fees for registration if both of the following conditions exist:

(1) The institution or training establishment usually makes this charge.

(2) The charge is not more than other students or trainees pay.

**831.7001-2 Special services or courses.**

Special services or courses are those services or courses that VA requests that are over and above those the institution customarily provides for similarly circumstanced nonveterans and that the contracting officer considers to be necessary for the rehabilitation of the

trainee. VA will negotiate the costs of special services or courses before paying them.

**831.7001-3 Books, supplies, and equipment required to be personally owned.**

(a) Reimbursement for supplies (including books, equipment, or other supplies) will be made as provided in this section.

(b) VA will provide reimbursement for those supplies that all students taking the same course or courses are customarily required to own personally. In addition, VA may provide reimbursement for items that the school does not specifically require for pursuit of the course, but that VA determines are needed because of the demands of the course, general possession by other students, and the disadvantage imposed on a veteran by not having the item. In no instance will VA provide reimbursement for supplies in a greater variety, quality, or amount than required of nonveteran students. In this instance, an item is not considered to be required if it is "requested" or "desirable to have" or "necessary for a future profession or job but not required by the institution of all students in the course".

(c) When supplies are available in several prices, grades, or qualities, VA will provide reimbursement only for that quality or grade that will meet the requirements.

(d) Partial payment agreements, in which VA shares payment with the veterans, are not allowed.

(e) The institution's costs in connection with a veteran's thesis are considered supplies and are therefore authorized for reimbursement if the veteran'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.

(f) When the institution operates a bookstore or supply store for all students, reimbursement to the bookstore or supply store for supplies issued to trainees will be no greater than charges made to nonveteran students.

(g) When the institution, training establishment, or employer arranges for stores or other non-institutionally owned establishments to issue supplies to all students and a veteran is to pay the store or establishment for supplies issued to trainees, VA will provide reimbursement for those charges if they are no greater than those nonveterans

pay or paid to the institutions, whichever is the lesser.

(h) Supplies that the institution purchases specifically for trainees will be reimbursed at the net cost to the institution.

(i) When the institution does not provide or arrange for issuance of generally required books, tools and supplies for students attending the facility, the institution, in cooperation with VA, may designate certain stores and establishments to provide generally required books, tools and supplies for veterans pursuing a vocational rehabilitation program. The vendor will be reimbursed in the same manner as for supplies provided or arranged for by the institutions.

(j) When it is customary in a survey class to permit each student to rent books for the subject (commonly referred to as a rental set), and the student is not required to own the books/materials, reimbursement is authorized for the rental charge as long as it does not exceed the charge made to nonveteran students.

(k) Educational and training institutions that furnish supplies to trainees that all students pursuing the same or similar course are required to own personally or obtain may be compensated for furnishing the supplies in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented subject to the following conditions:

(1) When the tuition covers the charges for supplies or rentals or a stipulated fee is assessed to all students, handling charges are not allowable.

(2) The handling charge is not allowable for Government-owned books that the institution 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 nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans, payment may be made if it is determined by the Veterans Health Administration that payment is in the best interest of the veteran and the Government.

(b) When the customary student's health fee does not cover medical services or hospital care, but these medical services are available in a school-operated facility or with doctors and hospitals in the immediate area through a prior arrangement, the Veterans Benefits Administration may provide reimbursement for these services in a contract for the services if:

(1) An arrangement is necessary to provide timely medical services for veterans attending the facility under provisions of Chapter 31; and

(2) The general rates established for medical services do not exceed the rates established by the Under Secretary for Health.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a veteran's program at the facility.

#### **831.7001-6 Consumable instructional supplies.**

(a) VA will provide reimbursement for consumable instructional supplies that the institution requires for the instruction of all students, veteran or nonveteran, 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 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 reused for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

(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.

#### **831.7001-7 Reimbursement for other supplies and services.**

VA will provide reimbursement for other services and assistance that may be authorized under provisions of applicable 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**

Sec.

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

#### **832.006 Reduction or suspension of contract payments upon finding of fraud.**

##### **832.006-1 General.**

The 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. This authority may not be redelegated.

**832.006–2 Definitions.**

The *remedy coordination official* for VA is the DSPE.

**832.006–3 Responsibilities.**

VA personnel must report suspected fraud related to advance, partial, or progress payments to the DSPE and VA Office of the Inspector General. The report must include all available information supporting the suspicion.

**832.006–4 Procedures.**

(a) Any recommendation from a VA employee through the DSPE to the SPE to reduce or suspend payment to a contractor under FAR 32.006 must address the considerations in FAR 32.006–4(d).

(b) The DSPE shall carry out the responsibilities of the Secretary or designee in FAR 32.006–4(e) to notify the contractor of proposed action under FAR 32.006. 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 DSPE to present information or argument in person or through a representative. 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 DSPE does not receive a reply from the contractor within 30 calendar days, the DSPE will base his or her recommendations on the information available. Any recommendation of the DSPE under paragraph (a) of this section must address the results of this notification and the information, if any, provided by the contractor.

(c) The SPE must provide a copy of each final determination and the supporting documentation to the contractor, the DSPE and the contracting officer. The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

**Subpart 832.1—Non-Commercial Item Purchase Financing****832.111 Contract clauses for non-commercial purchases.**

In solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments under

Fixed-Price Construction Contracts, the contracting officer shall insert the following clauses:

(a) If the solicitation or contract does not contain a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236–82, Payments under fixed-price construction contracts (without NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

(b) If the solicitation or contract contains a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236–83, Payments under fixed-price construction contracts (including NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

**Subpart 832.2—Commercial Item Purchase Financing****832.201 Statutory authority.**

The contracting officer may make the determination that terms and conditions for payment for commercial items are appropriate and customary in the commercial marketplace and are in the best interest of the Government, provided the terms and conditions for payment do not conflict with FAR Subpart 32.2.

**832.202 General.****832.202–1 Policy.**

As provided in FAR 32.202–1(d), contracting officers must obtain the approval of the DSPE before awarding a contract that includes unusual contract financing. The contracting officer must fully support the request with the reasons why the proposed unusual contract financing is in the best interest of the Government. In addition, contracting officers must not use commercial interim payment or commercial advance payment terms in solicitations or contracts without the approval of the DSPE.

**832.202–4 Security for Government financing.**

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 to establish the offeror's financial capability and to determine the offeror's financial condition:

(a) 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.

(b) 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.

(c) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial crisis, and credit arrangements.

(d) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions.

(e) 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.

(f) Any other financial information deemed necessary.

(g) A Dun and Bradstreet Report on the company.

**Subpart 832.4—Advance Payments for Non-Commercial Items****832.402 General.**

Authority to make the determination required by FAR 32.402(c)(1)(iii) and to approve contract terms, as provided by FAR 32.402(e)(1), is delegated to the SPE and is further delegated to the DSPE. Before award, contracting officers must submit a request for approval to use advance payment to the DSPE. The request must include the information required by FAR 32.409–1 and must address the standards for advance payment in FAR 32.402(c)(2).

**832.404 Exclusions.**

(a) Under 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.

(b) Under 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(c) Under 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees 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.

### Subpart 832.5—Progress Payments Based on Costs

#### 832.502 Pre-award matters.

#### 832.502-2 Contract finance office clearance.

Contracting officers must obtain approval from the DSPE before taking the actions listed in FAR 32.502-2. Full justification and the recommendations of the contracting officer must accompany requests for approval.

### Subpart 832.8—Assignment of Claims

#### 832.805 Procedure.

#### 832.805-70 Distribution/notification of assignment of claims.

(a) Prior to acknowledgement of receipt, in addition to the requirements of FAR 32.805(d), the contracting officer shall obtain legal review of the assignment (see 801.602-75(a)(7)). Upon acknowledgement of receipt, the contracting officer shall:

(1) File the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the Government Accountability Office copy of the contract; and

(2) Forward a copy of the notice of assignment and instrument of assignment to the local finance office and to the payment office cited in the contract.

(b) Contracting officers must notify field facilities of any recognized assignment of payments for contracts under which payment for articles and services is certified and approved for payment in the field.

### Subpart 832.9—Prompt Payment

#### 832.904 Determining payment due dates.

(a) When preparing specification packages, contracting officers must give full consideration to the time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments. Based on this analysis, contracting officers may, when authorized by FAR 32.904, modify the number of days allowed for notifying contractors of defects in invoices or, for construction solicitations, the number of days allowed for payment of invoices specified in the applicable prompt

payment clause. Changes, if any, should be made before issuing the solicitation.

(b)(1) For construction solicitations, the analysis specified in paragraph (a) of this section may routinely take more than the 7 days provided in paragraph (a)(2) of the FAR clause at 52.232-27, Prompt Payment for Construction Contracts, to evaluate and return defective progress payment invoices.

(2) It also may take more than the 14 days provided in paragraph (a)(1)(i)(A) of the prompt payment clause to adequately inspect the work, determine the adequacy of the contractor's performance, approve, and pay progress payment invoices.

(3) Contracting officers should consider the following and, if necessary, revise the number of days stated in paragraphs (a)(2) and (a)(1)(i)(A) of the prompt payment clause before issuing construction solicitations (see FAR 32.904(d)(1)(i)):

- (i) Recent interest payment history.
- (ii) The complexity of the project.
- (iii) Workload.
- (iv) Work site location.

(4) In no event may the number of days be set in excess of 14 days for return of a defective progress payment invoice or 30 days for payment of the invoice.

### Subpart 832.11—Electronic Funds Transfer

#### 832.1106 EFT mechanisms.

(a) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT mechanisms other than those authorized under FAR 32.1106(a).

(b) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT for payments to be received by or on behalf of a contractor outside the United States or Puerto Rico or for contracts paid in other than United States currency, as provided in FAR 32.1106(b).

## PART 833—PROTESTS, DISPUTES, AND APPEALS

### Subpart 833.1—Protests

Sec.

- 833.102 General.
- 833.103 Protests to VA.
- 833.104 Protests to GAO.
- 833.106 Solicitation provision and contract clause.

### Subpart 833.2—Disputes and Appeals

- 833.209 Suspected fraudulent claims.
- 833.211 Contracting officer's decision.

833.212 Contracting officer's duties upon appeal.

833.213 Obligation to continue performance.

833.214 Alternative dispute resolution (ADR).

833.215 Contract clause.

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

### Subpart 833.1—Protests

#### 833.102 General.

Solicitations must instruct interested parties (see FAR provision 52.233-2) to send a copy of any protest filed with the Government Accountability Office (GAO) to the contracting officer and the appropriate VA Central Office activity as follows:

(a) For contracts to be awarded by the Office of Construction and Facilities Management: Director, Office of Construction and Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) For all other contracts: Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

#### 833.103 Protests to VA.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer or, as an alternative, may request an independent review by filing a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management (DAS for A&MM), or for solicitations issued by the Director, Office of Construction and Facilities Management. A protest filed with the DAS for A&MM or the Director, Office of Construction and Facilities Management, will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(2) Protests to the contracting officer must be in writing and addressed where the offer/bid is to be submitted.

(3) Protests requesting an independent review must be in writing and addressed to the Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or, for solicitations issued by the Office of Construction and Facilities Management, to the Director, Office of Construction and Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(4) The following types of protests may be dismissed by VA without

consideration of the merits or forwarded to another agency for appropriate action:

(i) *Contract administration.* Disputes between a contractor and VA are resolved under the disputes clause of the contract and the Contract Disputes Act of 1978. (41 U.S.C. 601–613).

(ii) *Small business size standards and standard industrial classification.*

Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration (SBA). (15 U.S.C. 637(b)(6); 13 CFR 121.1002).

(iii) *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.

(iv) *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. (15 U.S.C. 637(a)).

(v) *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.

(vi) *Walsh-Healey Public Contract Act.* Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is determined solely by the procuring agency, the SBA (if a small business is involved), and the Secretary of Labor. (41 U.S.C. 35–45).

(vii) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where the subcontract is by or for the Government.

(viii) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(b) *Alternative dispute resolution.* Bidders/offerors and VA 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, VA will not furnish any

documentation in an ADR proceeding beyond what is allowed by the FAR.

(c) *Action upon receipt of protest.* For protests filed with the contracting officer, the HCA will be the approving official for the determinations identified in FAR 33.103(f)(1) and (f)(3). If the HCA is also the contracting officer, the approving official will be the DAS for A&MM. For protests filed with the DAS for A&MM or the Director, Office of Construction and Facilities Management, those individuals will be the approving officials for the determinations identified in FAR 33.103(f)(1) and (f)(3).

(d) *Requests for GAO advance decisions.* When a written protest has been filed with the contracting officer and the contracting officer considers it desirable to do so, the contracting officer may request an advance decision from the Comptroller General. The contracting officer must send the submission to the Comptroller General through the DAS for A&MM or the Director, Office of Construction and Facilities Management, as appropriate, and must include the material listed in FAR 33.104(a). The contracting officer must promptly notify the protesting individual or firm in writing of the decision of the Comptroller General.

(e) *Protest after award.* When a written protest is filed with the contracting officer after contract award, the following requirements apply:

(1) If FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer must seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis. If unsuccessful, the contracting officer must issue a stop-work order in accordance with contract clause FAR 52.233–3, Protest after Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer must furnish the protester a written explanation of the basis for the award that is responsive to the allegations of the protest. The contracting officer will advise the protester that the protester may appeal the determination to one of the following:

(i) The DAS for A&MM.

(ii) The Director, Office of Construction and Facilities Management, in the case of a contract awarded by the Office of Construction and Facilities Management.

(iii) The Comptroller General.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is

questionable, the contracting officer, after consulting with OGC, will advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer must submit the case promptly to the DAS for A&MM for advice. The DAS for A&MM may consult with OGC and will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General, through the Assistant Secretary for Management, for a decision. The contracting officer will provide interested parties with a copy of the final decision.

(f) *Agency appellate review of the contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the DAS for A&MM or, for solicitations issued by the Office of Construction and Facilities Management, with the Director, Office of Construction and Facilities Management. To be considered timely, the appeal must be received by the appropriate official named in this paragraph within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals must be addressed as provided in paragraph (a)(3) of this section. Appeals do not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided in this paragraph, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by OGC (025).

### 833.104 Protests to GAO.

(a) *General procedures.* (1) Procedures for protests to GAO are at 4 CFR Part 21 (GAO Bid Protest Regulations). If guidance concerning GAO procedure in this section differs from 4 CFR Part 21, 4 CFR Part 21 applies.

(2) When a protest before or after award has been filed with GAO, the contracting officer must submit a report to the DAS for A&MM, or the Director, Office Construction and Facilities Management, as appropriate, within 5 workdays after receipt of verbal or written notice of the protest, whichever occurs first. The report must include a copy of the documentation indicated in FAR 33.104(a)(3).

(3) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(4).

(b) *Protests before award.* When VA receives notice from GAO of a pre-

award protest filed directly with GAO, award will normally not be made until the matter is resolved. However, award may be made despite the protest if the DAS for A&MM, or the Director, Office of Construction and Facilities Management, as appropriate, approves the findings of the HCA required by FAR 33.104(b)(1) and GAO has been notified as provided by FAR 33.104(b)(2). The Director, Acquisition Resources Service, or the Director, Office of Construction and Facilities Management, as appropriate, is responsible for notifying GAO.

(c) *Protests after award.* When, after award of a contract, VA receives notice from GAO of a protest filed directly with GAO, the contracting officer must, if required to do so by FAR 33.104(c)(1), immediately suspend performance. However, contract performance need not be suspended, despite the protest, if the SPE approves the HCA's findings required by FAR 33.104(c)(2) and GAO has been notified under FAR 33.104(c)(3). Authority to approve the HCA's findings is further delegated to the DSPE and, for solicitations issued by the Officer of Construction and Facilities Management, the Director, Office of Construction and Facilities Management. The Director, Acquisition Resources Service, or the Director, Office of Construction and Facilities Management, as appropriate, is responsible for notifying GAO.

#### **833.106 Solicitation provisions.**

(a) The contracting officer shall insert the provision at 852.233-70, Protest content/alternative dispute resolution, in each solicitation expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233-71, Alternative protest procedure, in solicitations expected to exceed the simplified acquisition threshold.

#### **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 referral to the Department of Justice. 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) When a dispute cannot be settled by agreement and a final decision under

the Disputes clause of the contract is necessary, the contracting officer must furnish the contractor the contracting officer's final decision in the matter.

(b) The contracting officer must identify the decision, in writing, as a final decision and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. The decision must set forth those facts relevant to the dispute with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) For VA contracts, the Board of Contract Appeals noted in FAR 33.211 is the Civilian Board of Contract Appeals (CBCA), 1800 F Street, NW., Washington, DC 20405.

##### **833.212 Contracting officer's duties upon appeal.**

(a) When a contracting officer receives notice of appeal in any form, the contracting officer must do the following:

(1) Annotate the appeal with the date of mailing (or date of receipt, if otherwise conveyed).

(2) Within 10 days, forward the original notice of appeal and a copy of the contracting officer's final decision letter to the OGC.

(3) Concurrently transmit copies of the notice of appeal and the final decision letter to the DAS for A&MM. (In cases of construction contracts administered by the Office of Construction and Facilities Management, copies of the appeal and the final decision letter need not be transmitted to the DAS for A&MM but instead should be sent to the Director, Office of Construction and Facilities Management.)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer must assemble and transmit to the OGC, an appeal file consisting of all documents pertinent to the appeal, including all of the following:

(1) The decision and findings of fact that are being appealed.

(2) The contract, including specifications and pertinent amendments, plans and drawings.

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued.

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal.

(5) Any additional information considered pertinent.

##### **833.213 Obligation to continue performance.**

(a) As provided in FAR 33.213, contracting officers shall use FAR clause 52.233-1, Disputes, with its Alternate I. 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.

(b) In the event of a dispute not arising under, but relating to, the contract, if the contracting officer directs continued performance, the contracting officer may consider providing financing for the continued performance, provided that the Government's interests are properly secured. The contracting officer will contact the DAS for A&MM and OGC for advice prior to authorizing such financing.

##### **833.214 Alternative dispute resolution (ADR).**

Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures. CBCA guidance on ADR may be obtained at <http://www.cbca.gsa.gov>.

##### **833.215 Contract clause.**

The contracting officer must use the clause at 52.233-1, Disputes, 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**

Sec.

836.202 Specifications.

836.203 Government estimate of construction costs.

836.204 Disclosure of the magnitude of construction projects.

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 836.606-71 Architect-engineer's proposal.  
 836.606-72 Contract price.  
 836.606-73 Application of 6 percent architect-engineer fee limitation.

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

#### Subpart 836.2—Special Aspects of Contracting for Construction

- 836.202 Specifications.

(a) The procedures described in Part 811 are applicable to construction specifications.

(b) During the design stage, contract architect-engineers must not use "brand name or equal" or other restrictive specifications without the prior written approval of the contracting officer. The contracting officer must inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If VA has determined that only one product will meet the Government's minimum needs and VA will not allow the submission of "equal" products, the contracting officer must include the clause found at 852.236-90, Restriction on Submission and Use of Equal Products, in the solicitation and complete the clause by listing the items to which the clause applies. This clause places bidders on notice that the "brand name or equal" provisions of the clause found at FAR 52.236-5, Materials and Workmanship, and any other provision that may authorize the submission of an "equal" product, will not apply to the specific items listed.

#### 836.203 Government estimate of construction costs.

The overall amount of the Government estimate must not be disclosed until after award of the contract. After award, the contracting

officer may disclose the overall amount upon request.

#### 836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the contracting officer must identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000.
- (b) Between \$25,000 and \$100,000.
- (c) Between \$100,000 and \$250,000.
- (d) Between \$250,000 and \$500,000.
- (e) Between \$500,000 and \$1,000,000.
- (f) Between \$1,000,000 and \$2,000,000.
- (g) Between \$2,000,000 and \$5,000,000.
- (h) Between \$5,000,000 and \$10,000,000.
- (i) Between \$10,000,000 and \$20,000,000.
- (j) Between \$20,000,000 and \$50,000,000.
- (k) Between \$50,000,000 and \$100,000,000.
- (l) More than \$100,000,000.

#### 836.206 Liquidated damages.

The contracting officer may include a liquidated damages provision in a construction contract when the criteria of FAR 11.501 and 811.501 are met. If partial performance may be accepted and used to the advantage of the Government, the contracting officer must include the clause substantially as set forth in 852.211-74, Liquidated Damages, in addition to the clause set forth in FAR 52.211-12.

#### 836.209 Construction contracts with architect-engineer firms.

(a) When the contracting officer considers it necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to a firm or person that designed the project, the contracting officer must request prior approval from one of the following:

(1) The facility or VISN director, as appropriate, or, for National Cemetery Administration contracts, the Director, Technical Support Service, for contracts involving nonrecurring maintenance (NRM) funds.

(2) The Director, Office of Construction and Facilities Management, for contracts involving construction funds.

(b) The contracting officer must furnish complete justification in the request.

(c) This section does not apply to design-build contracts, as defined at FAR 36.102.

#### 836.213 Special procedures for sealed bidding in construction contracting.

##### 836.213-4 Notice of award.

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

##### 836.213-70 Notice to proceed.

(a) The contracting officer must provide construction contractors with a written notice to proceed for the work. A notice to proceed will normally be sent only after the contractor has provided performance and payment bonds or payment protection and the completed contract forms, where applicable, and the contracting officer has accepted them. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the contracting officer may include in the award letter a notice to proceed, with the reservation that payments are contingent upon receipt and approval of the required bonds or payment protection.

(b) If the contract provides for liquidated damages, the contracting officer must send the notice to proceed by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work must be completed within \_\_ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. In notices to proceed for these contracts, the contracting officer must establish a date for completion that takes into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, the contracting officer must furnish a copy to the resident engineer or the Chief, Engineering Service.

(e) The contracting officer must file a copy of the notice to proceed with copy A of the contract. When certified mail or other method of certified delivery is used, the contracting officer must attach the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service to the copy of the notice to proceed. The contracting officer must file copies of the notice to proceed with copies C and D of the contract after the

date of receipt has been established and indicated on the notice to proceed.

### Subpart 836.5—Contract Clauses

#### 836.500 Scope of subpart.

(a) The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in Subpart 801.4.

(c) Clauses and provisions that differ from those contained in FAR Subparts 36.5 and 52.2 and this subpart, but considered essential to the procurement of VA requirements, shall not be used unless the deviation procedure set forth in Subpart 801.4 has been complied with.

#### 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 or contracts include a section entitled “Network Analysis System (NAS),” the contracting officer must use the clause with its Alternate I.

#### 836.513 Accident prevention.

The contracting officer must insert the clause at 852.236–87, Accident Prevention, in solicitations and contracts for construction that contain the clause at FAR 52.236–13, Accident Prevention.

#### 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.

#### 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 for construction (currently \$2,000).

#### 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 for construction.

#### 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 for construction.

#### 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 Subcontracts 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 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.

#### 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 for construction 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 for construction.

#### 836.577 Workers' compensation.

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

#### 836.578 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 for construction. (This section has been promulgated as a deviation from the FAR as provided in 801.4.)

(b) When negotiated changes exceed \$500,000, paragraph (a) of the clause at 852.236–88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must furnish cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404–2.

(c) When the negotiated change will be \$500,000 or less, paragraph (b) of the clause at 852.236–88 will apply. Because the indirect cost rates in paragraph (b) of the clause at 852.236–88 are ceiling rates, the contracting officer must negotiate indirect expense rates within the ceiling limitations.

#### 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 for construction.

### Subpart 836.6—Architect-Engineer Services

#### 836.602 Selection of firms for architect-engineer contracts.

##### 836.602–1 Selection criteria.

(a) In addition to the evaluation criteria set forth in FAR 36.602–1, the evaluation board must consider the factors set forth in paragraph (b) of this section as they apply to the project or purpose of the selection. Values must be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the pre-selection process. The board may adjust the assigned values after its discussions.

(b) The following factors must be considered:

(1) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(2) Record of significant claims against the firm because of improper or incomplete architectural and engineering services.

(3) Specific experience and qualifications of personnel proposed for

assignment to the project and their record of working together as a team.

**836.602-2 Evaluation boards.**

(a) The Director, Office of Construction and Facilities Management, shall appoint an evaluation board to select architect-engineer contractors for Office of Construction and Facilities Management projects. The Director, Office of Construction and Facilities Management, shall appoint an evaluation board to select architect-engineer contractors for National Cemetery Administration projects. The facility or VISN director, as appropriate, shall appoint an evaluation board to select architect-engineer contractors for field facility projects.

(b) The Director, A/E Evaluation and Program Support Service, will chair the evaluation board for Office of Construction and Facilities Management architect-engineer contracts. The Chair may designate the Project Director or Project Manager to act as Chair when necessary. When appointing the board's members, the Director, Office of Construction and Facilities Management, must include the appropriate Project Manager and as many qualified professional architects or engineers from the Office of Construction and Facilities Management technical services as may be considered appropriate for the particular project. The Director, Office of Construction and Facilities Management may designate additional members from the Office of Construction and Facilities Management or from other Department administrations and staff offices when appropriate.

(c) The Director, Office of Construction and Facilities Management, shall ensure that the board consists of no fewer than three members, one of whom must be a National Cemetery Administration senior level contracting officer. The Director shall designate one of the board members as the Chair.

(d) The evaluation board for a VA field facility must consist of no fewer than two members, one of whom will be the HCA (or the senior contracting officer at the facility if there is no HCA on site) and the other will be the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, the facility or VISN director must appoint an additional engineer to the board. The Chair of the board will be the senior engineer.

**836.602-4 Selection authority.**

The Director, Office of Construction and Facilities Management (for Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and the facility or VISN director (for field facility contracts), as appropriate, or persons acting in those capacities, are designated as the approving officials for the recommendations of the respective evaluation boards.

**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 that are not expected to exceed the simplified acquisition threshold.

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

The Director, Office of Construction and Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery 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.

**836.606 Negotiations.**

**836.606-70 General.**

To assure that the fee limitation is not violated, the contracting officer must maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

**836.606-71 Architect-engineer's proposal.**

(a) When the contract price is estimated to be \$50,000 or more, the contracting officer must use VA Form 10-6298, Architect-Engineer Fee Proposal, to obtain the proposal and supporting cost data from the proposed contractor and subcontractor in the negotiation of an architect-engineer contract for design services.

(b) In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, the contracting officer must use VA Form 10-6298 supplemented or modified as needed for the particular project type.

**836.606-72 Contract price.**

(a) Where negotiations with the top-rated firm are unsuccessful, the contracting officer shall, after authorization by the Director, Office of Construction and Facilities Management, the Director, Office of Construction Management, or the

facility or VISN director, as appropriate, terminate the negotiations and undertake negotiations with the firm next in order of preference.

(b) The contracting officer shall submit a recommendation for award of the contract at the negotiated fee to the Director, Office of Construction and Facilities Management, the Director, Office of Construction Management, or the facility or VISN director, as appropriate. A copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, whenever a field pricing report has been received, a copy of the report must accompany the recommendation.

**836.606-73 Application of 6 percent architect-engineer fee limitation.**

(a) The total cost of the architect or engineer services contracted for must not exceed 6 percent of the estimated cost of the construction project plus any fees for related services and activities such as those shown in paragraph (c) of this section.

(b) To support project submissions, the engineering officer or project engineer must use VA Form 10-1193, Application for Health Care Facility Project, and Form 10-6238, EMIS Construction Program Estimate Worksheet, and must show the proposed technical services where necessary and applicable.

(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; and
  - (vi) Surveys: topographic, boundary, utilities, etc.

(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 samples, and other services performed during the construction phase; and

(iv) All other services that are not an integral part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

## **PART 837—SERVICE CONTRACTING**

### **Subpart 837.1—Service Contracts—General** Sec.

- 837.103 Contracting officer responsibility.  
837.110 Solicitation provisions and contract clauses.  
837.110–70 Services provided to eligible beneficiaries.

### **Subpart 837.2—Advisory and Assistance Services**

- 837.203 Policy.

### **Subpart 837.4—Nonpersonal Health Care Services**

- 837.403 Contract clause.

### **Subpart 837.70—Mortuary Services**

- 837.7001 General.  
837.7002 List of qualified funeral directors.  
837.7003 Funeral authorization.  
837.7004 Administrative necessity.  
837.7005 Unclaimed remains—all other cases.

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

### **Subpart 837.1—Service Contracts—General**

#### **837.103 Contracting officer responsibility.**

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or non-personal services, the contracting officer will request a legal opinion from the appropriate Regional Counsel.

#### **837.110 Solicitation provisions and contract clauses.**

The contracting officer shall insert the clause at 852.237–70 Contractor responsibilities, in solicitations and contracts for services.

#### **837.110–70 Services provided to eligible beneficiaries.**

Contracting officers shall include the clause at 852.271–70, Nondiscrimination in services provided to beneficiaries, in all solicitations and contracts covering services provided to eligible beneficiaries.

### **Subpart 837.2—Advisory and Assistance Services**

#### **837.203 Policy.**

The definition of advisory and assistance services includes, in addition to examples listed in FAR 37.203, services to obtain peer review of research proposals.

### **Subpart 837.4—Nonpersonal Health Care Services**

#### **837.403 Contract clause.**

The contracting officer shall insert the clause at 852.237–7, Indemnification and medical liability insurance, in lieu of FAR Clause 52.237–7, in 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.

### **Subpart 837.70—Mortuary Services**

#### **837.7001 General.**

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of VA, as provided in 38 U.S.C. 2302, 2303, and 2308.

#### **837.7002 List of qualified funeral directors.**

Contracting officers will establish, in coordination with cognizant Chief, Medical Administration Service (MAS) personnel or other personnel designated by the facility director to perform these functions, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of \$300 (see 38 U.S.C. 2302). Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director that would ensure the adequacy of the funeral director's services and casket, arrangements will be made before contract negotiation to inspect the premises and the casket to be provided, as well as to check with the local business bureau and/or Chamber of Commerce. (38 U.S.C. 2302)

#### **837.7003 Funeral authorization.**

(a) When a veteran dies while receiving care in a VA health care facility or in a non-VA institution at VA's expense, and the decedent's remains are unclaimed, the Chief, MAS,

or the person designated by the facility director to perform these functions, will forward to the HCA a properly executed VA form 10–2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of \$300. The purchase order must list the specific services to be provided. The services must consist of the following:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, at a minimum, must be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable.)

(4) The securing of all necessary permits.

(5) Ensuring that a United States flag (provided the funeral director in accordance with M–1, Part I, paragraph 14.40) accompanies the casket to the place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 2308. This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside shipping box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the \$300 allowance.

(d) In accordance with M–1, Part I, paragraph 14.37, the contracting officer will designate the Chief, MAS, or the person designated by the facility director to perform these functions, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The HCA will assist the Chief, MAS, or the person designated by the facility director to perform these functions, in developing the local procedures specified in M–1, Part I, paragraph 14.37c. (38 U.S.C. 2302, 2303, and 2308)

#### **837.7004 Administrative necessity.**

(a) VA may make arrangements and assume expenses for local burial under separate contractual agreement when:

(1) A person dies under VA care who is not legally entitled to such care at VA's expense;

(2) No relatives or friends claim the remains; and

(3) The municipal, county, or State officials refuse to provide for final disposition.

(b) When the contracting officer cannot obtain a full and complete funeral and burial service as prescribed in 837.7003 within the statutory allowance, before taking any further action, the contracting officer will secure from the facility or VISN director, as appropriate, a written determination that VA must accomplish the disposition of the remains as an administrative necessity. The facility director will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose.

(c) The contracting officer will make the facility director's determination and authorization a part of the contract file. (38 U.S.C. 2302)

#### **837.7005 Unclaimed remains—all other cases.**

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care or treatment of VA will be referred to the Veterans Services Officer for processing in accordance with M27-1, Part II.

### **PART 841—ACQUISITION OF UTILITY SERVICES**

#### **Subpart 841.1—General**

Sec.

841.100 Scope of part.

841.103 Statutory and delegated authority.

#### **Subpart 841.2—Acquiring Utility Services**

841.201 Policy.

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

#### **Subpart 841.1—General**

##### **841.100 Scope of part.**

This part prescribes procedures for obtaining delegations of authority to award contracts for utility connection charges and provides guidance on review requirements for such proposed contracts.

##### **841.103 Statutory and delegated authority.**

(a) The Assistant Commissioner for Procurement, General Services Administration (GSA), has delegated the Secretary of Veterans Affairs authority to enter into public utility contracts for connection charges for utility services.

(b) Except as provided in paragraph (a) of this section, the authority to award

all other contracts for utility services, as defined in FAR 41.101, is vested in GSA (see FAR 41.103). VA contracting officers who wish to award local contracts for utility services, other than for connection charges, must first obtain a delegation of authority to award such contracts from GSA. Contracting officers shall submit requests for delegation of authority directly to GSA.

(c) Any authority described in paragraphs (a) or (b) of this section delegated to the Secretary is further delegated to the SPE and is further delegated to the DSPE and to VA contracting officers within the limits of their warrants.

### **Subpart 841.2—Acquiring Utility Services**

#### **841.201 Policy.**

As required by 801.602-71, contracting officers must submit solicitations and proposed agreements for utility services exceeding \$50,000 in total costs to the appropriate Acquisition Resources Service office for technical and legal review.

### **SUBCHAPTER G—CONTRACT MANAGEMENT**

### **PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

Sec.

842.000 Scope of part.

842.070 Definitions.

#### **Subpart 842.1—Contract Audit Services**

842.101 Contract audit responsibilities.

842.102 Assignment of contract audit services.

#### **Subpart 842.7—Indirect Cost Rates**

842.705 Final indirect cost rates.

#### **Subpart 842.8—Disallowance of Costs**

842.801 Notice of intent to disallow costs.

842.801-70 Audit assistance prior to disallowing costs.

842.803 Disallowing costs after incurrence.

#### **Subpart 842.12—Novation and Change-of-Name Agreements**

842.1203 Processing agreements.

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

#### **842.000 Scope of part.**

This part applies to all contracts, whether awarded through sealed bidding or negotiation.

#### **842.070 Definitions.**

*Contract administration* is the coordination of actions required for the performance of a contract. This includes the contracting officer's guidance and supervision necessary to assure that the

contractor fulfills all contractual obligations.

### **Subpart 842.1—Contract Audit Services**

#### **842.101 Contract audit responsibilities.**

(a) Contracting officers may use the support services of other agencies to the extent feasible. Examples of such services include: pre-award surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Contracting officers obtaining support services from any other Government department or agency must do so on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding between the parties to the agreement. The agreement should clearly state the following:

(1) The accord reached between the two parties involved, especially the obligations assumed and the rights granted each party.

(2) The resources that both the supplying and receiving parties will provide.

(3) The funding and reimbursement arrangements.

(4) Clauses permitting revisions, modifications, or cancellation of the agreement.

#### **842.102 Assignment of contract audit services.**

(a) When required, contracting officers shall request the assistance of the VA Office of the Inspector General (OIG), Office of Contract Review, to provide pre- and post-award audit, review, and advisory services associated with the award or modification of:

(1) Federal Supply Schedule and other contracts awarded by the VA National Acquisition Center;

(2) Scarce medical specialist or sharing contracts awarded under the authority of 38 U.S.C. 7409 or 8153, and;

(3) Claims involving such contracts.

(b) Contracting officers may request the assistance of either the VA OIG Office of Contract Review or the Defense Contract Audit Agency (DCAA) to provide pre- and post-award audit, review, and advisory services associated with other types of contracts or claims.

### **Subpart 842.7—Indirect Cost Rates**

#### **842.705 Final indirect cost rates.**

(a) Except when the quick-closeout procedures described in FAR 42.708 are used, contracting officers must request audits on proposed final indirect cost rates and billing rates for use in cost

reimbursement, fixed-price incentive, and fixed-price redeterminable contracts as prescribed in FAR Subpart 42.7.

(b) When the quick closeout procedures are used, the contracting officers must perform a review and validation of the contractor's data for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

#### **Subpart 842.8—Disallowance of Costs**

##### **842.801 Notice of intent to disallow costs.**

##### **842.801-70 Audit assistance prior to disallowing costs.**

If a contracting officer determines that costs should be disallowed during the performance of a cost reimbursement, fixed-price incentive, or fixed-price redetermination contract exceeding the thresholds specified in FAR 15.403-4, the contracting officer must request audit assistance. The VA OIG shall conduct audits of contracts for health care resources and contracting officers shall request such audits directly from that office. For all other types of contracts, the contracting officer must obtain an audit control number from Acquisition Resources Service and send a formal request to conduct the audit directly to the nearest Defense Contract Audit Agency (DCAA) office, referencing the audit control number and the project number (if any).

##### **842.803 Disallowing costs after incurrence.**

Contracting officers may approve or disapprove contractors' vouchers for payment and process them to the servicing fiscal office. Such approval or disapproval must be within the limitations of the contracting officer's warrant and the contract for which the voucher is submitted must be within the contracting officer's delegation of contracting authority.

#### **Subpart 842.12—Novation and Change-of-Name Agreements**

##### **842.1203 Processing agreements.**

Before execution of novation and change-of-name agreements, contracting officers must submit all supporting agreements and documentation to the OGC for review as to legal sufficiency.

### **PART 846—QUALITY ASSURANCE**

#### **Subpart 846.3—Contract Clauses**

Sec.

- 846.302 Fixed-price supply contracts.
- 846.302-70 Guarantee clause.
- 846.302-71 Inspection.
- 846.302-72 Frozen processed foods.

846.302-73 Noncompliance with packaging, packing and/or marking requirements.

846.312 Construction contracts.

#### **Subpart 846.4—Government Contract Quality Assurance**

846.408 Single-agency assignments of Government contract quality assurance.

846.408-70 Inspection of subsistence.

846.408-71 Waiver of USDA inspection and specifications.

846.470 Use of commercial organizations for inspections and grading services.

846.471 Determination authority.

846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

846.472-1 Repairs of \$1,000 or less.

846.472-2 Repairs in excess of \$1,000.

#### **Subpart 846.7—Warranties**

846.710 Contract clauses.

846.710-70 Special warranties.

846.710-71 Warranty for construction—guarantee period services.

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

#### **Subpart 846.3—Contract Clauses**

##### **846.302 Fixed-price supply contracts.**

##### **846.302-70 Guarantee clause.**

(a) The contracting officer shall insert the clause at 852.246-70, Guarantee, in solicitations for the acquisition of equipment.

(b) If it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence of the clause at 852.248-70 will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to guarantee components for the life of the equipment (e.g., crystals in transmitters and receivers in radio communications systems) or to require that highly technical equipment be returned to the factory (at the contractor's or the Government's expense) for replacement of defective materials or parts, then the clause will be revised to be compatible with such policy.

##### **846.302-71 Inspection.**

The contracting officer shall include a "Rejected Goods" contract clause in solicitations and contracts as follows:

(a) Except as provided in paragraph (b) of this section, insert the clause at 852.246-71, Inspection, in solicitations and contracts for the acquisition of supplies or equipment.

(b) In solicitations and contracts for packing house and dairy products, bread and bakery products, and for fresh and frozen fruits and vegetables, insert the Alternate I clause at 852.246-71, Inspection.

##### **846.302-72 Frozen processed foods.**

The contracting officer shall insert the clause at 852.246-72, Frozen processed foods, in solicitations and contracts for frozen processed foods.

##### **846.302-73 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) and 812.302.

##### **846.312 Construction contracts.**

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

#### **Subpart 846.4—Government Contract Quality Assurance**

##### **846.408 Single-agency assignments of Government contract quality assurance.**

##### **846.408-70 Inspection of subsistence.**

(a) Before issuing a solicitation for subsistence, the contracting officer must determine whether:

(1) Representatives of the U.S. Department of Agriculture (USDA) or the Department of Commerce will inspect for specification compliance before shipment; or

(2) Personnel of the purchasing activity will inspect for specification compliance at the time of delivery.

(b) The contracting officer must indicate the time and place of inspection in the solicitation.

(c) Because the requirement for USDA or Department of Commerce inspections and certifications result in additional contractor costs that may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Nutrition and Food Service, must evaluate the need for such inspections. The evaluation must include the following:

(1) The quality assurance already provided by other mandatory inspection systems.

(2) The proposed suppliers' own quality control system.

(3) Experience with the proposed suppliers.

(4) The pre-qualifying of the suppliers' quality assurance systems

and subsequently waiving inspections and certifications for future solicitations.

(5) The cost of the inspections.

(d) When the contracting officer indicates that either the USDA or the Department of Commerce will conduct the inspection, the contracting officer must 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 or is furnished to the receiving installation before shipment, or notifying the installation when the certificate is not immediately available.

(4) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer.

(5) Furnishing samples for inspection at the contractor's expense.

(6) Indicating the address where inspection will occur.

(e) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

**846.408-71 Waiver of USDA inspection and specifications.**

(a) When the amount of an item to be purchased will not exceed 500 pounds per delivery, the contracting officer may purchase the following without reference to the specifications in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL, and the USDA inspection requirements:

(1) Butter.

(2) Cheese (except cottage cheese).

(3) Sausage.

(4) Meat food products\*.

(5) Bacon, smoked.

(6) Bacon, Canadian style.

(b) When the items listed in paragraph (a) of this section are procured together with items that are not exempt, the contracting officer must include the following in the solicitation:

Items \* \* \* are not required to be in accordance with the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL, and the special USDA inspection is not required. VA will inspect for quality and condition upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(c) As appropriate, the contracting officer must include the following

statements in each invitation for bid, request for proposal, quotation, or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products.\*

(i) This product must be a high commercial product and must have been prepared in a federally inspected plant and bear the USDA establishment number stamp evidencing that it is sound, healthful, wholesome, and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act that requires the listing of all ingredients in the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and must have been prepared in a federally inspected plant and bear the USDA establishment number stamp evidencing that it is sound, healthful, wholesome, and fit for human consumption.

(d) When using a "brand name or equal" purchase description, the contracting officer must list every brand name item that is known to be acceptable and available in the area.

\* "Meat food products" means processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

**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 conditions 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 Determination authority.**

The following officials must make the determinations required in 846.470:

(a) The Director, Office of Construction and Facilities Management, for those items and

services for which purchase authority has been assigned to the Office of Construction and Facilities Management.

(b) The Director, Veterans Canteen Service, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from VA supply sources).

(c) The DSPE for all other supplies, equipment, and services.

**846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.**

As provided in 846.472-1 and 846.472-2, management brokers or qualified fee or staff inspectors must conduct a final inspection of all repair programs upon completion. In addition, the broker or inspector must conduct intermediate or progress inspections on extensive or technical jobs as specified in the contract.

**846.472-1 Repairs of \$1,000 or less.**

(a) Generally, the management broker must make any required inspections for repairs of \$1,000 or less. A qualified fee or staff inspector must make any required inspection for repairs of \$1,000 or less if the contracting officer:

(1) Has not assigned the property to a management broker; or,

(2) Has determined that the nature of the repairs requires supervision by a technician.

(b) There is no form prescribed for inspection of repairs of \$1,000 or less, but the inspector may use VA Form 26-1839, Compliance Inspection Report. Regardless of the form in which the report is submitted, the inspector must identify the contractor, property, and the repair program and provide sufficient detail to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

**846.472-2 Repairs in excess of \$1,000.**

(a) A qualified fee or staff inspector must make the final inspection and any intermediate or progress inspections on repairs exceeding \$1,000.

(b) The inspector must make the report of inspection on VA Form 26-1839, Compliance Inspection Report. The inspector must identify the property, contractor, and repair program and provide sufficient detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the terms of the

contract. The inspector must itemize any deficiencies and explain the deficiencies in detail.

### Subpart 846.7—Warranties

#### 846.710 Contract clauses.

The contracting officer shall insert the clause at FAR 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 852.246–74, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty of Construction.

#### 846.710–71 Warranty for construction—guarantee period services.

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 at 52.246–21, Warranty of Construction, and that also include guarantee period services.

## PART 847—TRANSPORTATION

### Subpart 847.3—Transportation in Supply Contracts

Sec.

847.303 Standard delivery terms and contract clauses.

847.303–1 F.o.b. origin.

847.303–70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305–70 Potential destinations known but quantities unknown.

847.306 Transportation factors in the evaluation of offers.

847.306–70 Transportation payment and audit.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

### Subpart 847.3—Transportation in Supply Contracts

#### 847.303 Standard delivery terms and contract clauses.

#### 847.303–1 F.o.b. origin.

Shipments falling within this category must be shipped on a bill of lading, except as provided in 41 CFR 102–118.40. Contracting officers must comply with 41 CFR Parts 102–117 and 102–118. Contact the Traffic Manager for assistance in determining when to issue the applicable bill of lading (VA Commercial Bill of Lading for domestic use or Government Bill of Lading for

international shipments and domestic off-shore shipments) and for all freight estimates.

#### 847.303–70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as “f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice,” under any of the following circumstances:

(1) When it is determined that an f.o.b. origin purchase or delivery order will have transportation charges that do not exceed \$250 and the occasional exception does not exceed that amount by more than \$50.

(2) Single parcel shipments via express, courier, small package, or similar carriers, regardless of shipping cost, if the shipped parcel weighs 70 pounds or less and does not exceed 108 inches in length and girth combined.

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed \$250 per shipment.

(b) Orders issued on VA Form & 90–2138, Orders for Supplies or Services, must identify shipping instructions on the reverse side of the form. When VA Form 90–2138 is not used, the vendor must do the following:

(1) Consistent with the terms of the contract, pack, mark, and prepare shipment in conformance with carrier requirements to protect the personal property and assure the lowest applicable transportation charge. Follow package specifications found in the National Motor Freight Classification 100 Series.

(2) Add transportation charges as a separate item on the invoice. The invoice must include the following certification: “The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government’s request.”

(3) Not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Not prepay transportation charges on the order if such charges are expected to exceed \$250. Ship collect and annotate the commercial bill of lading, “To be converted to VA Commercial Bill of Lading.” Contact the VA Traffic Manager for routing instructions and freight estimate.

(c) Each contracting officer is responsible for:

(1) Obtaining the most accurate estimate possible of transportation charges.

(2) Using the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When, in accordance with FAR Subpart 28.3 and FAR 47.102, a shipment must be insured or the value declared, the contracting officer will specifically instruct the vendor to do so on the order when a written order is used. If the order is oral, the vendor must annotate all copies of the purchase request to show that the insurance/declared value was specifically requested.

#### 847.305 Solicitation provisions, contract clauses, and transportation factors.

#### 847.305–70 Potential destinations known but quantities unknown.

When the VA National Acquisition Center 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. To place each bid 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. The clause prescribed in 852.247–70 must be used in these instances.

#### 847.306 Transportation factors in the evaluation of offers.

#### 847.306–70 Transportation payment and audit.

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.

## PART 849—TERMINATION OF CONTRACTS

### Subpart 849.1—General Principles

Sec.

849.101 Authorities and responsibilities.

849.106 Fraud or other criminal conduct.

849.111 Review of proposed settlements.

849.111–70 Required review.

849.111–71 Submission of information.

**Authority:** 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

### Subpart 849.1—General Principles

#### 849.101 Authorities and responsibilities.

(a) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or faxing the default

letter and related documents which are required to make an evaluation directly to General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

(b) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

#### **849.106 Fraud or other criminal conduct.**

(a) If the contracting officer suspects fraud or other criminal conduct related to the settlement of a terminated contract, the contracting officer must do the following:

(1) Immediately discontinue all negotiations.

(2) Submit all of the pertinent facts necessary to support the suspicions to either of the following:

(i) The DSPE.

(ii) The Director, Office of Construction and Facilities Management, in the case of contracting officers from the Office of Construction and Facilities Management.

(3) Follow procedures as provided in 809.406-3 and 809.407-3.

(b) The DSPE or the Director, Office of Construction and Facilities Management, must review the submission and fully develop the facts.

(c) If the evidence indicates fraud or other criminal conduct, the DSPE or the Director, Office of Construction and Facilities Management, must forward the submission with recommendations through channels (to include OGC, if appropriate), to the Office of the Inspector General (OIG) for referral to the Department of Justice.

(d) The DSPE or the Director, Office of Construction and Facilities Management, will advise the contracting officer as to any further action to be taken. Pending receipt of this advice, no VA employee may discuss the matter with the contractor.

(e) VA will not initiate a 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 OIG.

(f) If the contractor makes an inquiry, the contracting officer will advise only that the proposal has been forwarded to higher authority.

#### **849.111 Review of proposed settlements.**

##### **849.111-70 Required review.**

(a) FAR 49.111 requires each agency to establish procedures, when necessary, for the administrative review of proposed termination settlements. Contracting officers shall submit proposed termination settlements or determinations of amounts due the contractor under a terminated contract that involve the expenditure of \$100,000 or more of Government funds to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, for technical and legal review (see 801.602-72(i)). Contracting officers shall not execute the settlement agreement or determination prior to receipt of the technical and legal review. The legal review of contracts awarded by or on behalf of the VA OIG will be conducted by the Counselor to the Inspector General.

(b) If the contracting officer declines to implement one or more of the recommendations or comments contained in the review memorandum, the contracting officer shall submit a written response to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, explaining why the recommendations or comments were not followed. For contracts awarded by or on behalf of the VA OIG, the response shall be submitted to the Counselor to the Inspector General.

##### **849.111-71 Submission of information.**

(a) The contracting officer shall submit to the appropriate Acquisition Program Management Division or Acquisition Assistance Team office a copy of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal.

(2) The audit report.

(3) The property disposed report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the procurement analyst in the review. The procurement analyst may, at his or her discretion, require the submission of additional information.

(b) The Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, will

obtain the concurrence or comments of OGC prior to forwarding the review to the contracting officer, except that the concurrence or comments will be obtained from the Counselor to the Inspector General for contracts awarded by or on behalf of the VA Office of Inspector General.

#### **SUBCHAPTER H—CLAUSES AND FORMS**

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

##### **Subpart 852.1—Instructions for Using Provisions and Clauses**

Sec.

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 Display of Department of Veterans Affairs hotline poster.

852.207-70 Report of employment under commercial activities.

852.209-70 Organizational conflicts of interest.

852.211-70 Service data manuals.

852.211-71 Special notice.

852.211-72 Technical industry standards.

852.211-73 Brand name or equal.

852.211-74 Liquidated damages.

852.211-75 Product specifications.

852.214-70 Caution to bidders—bid envelopes.

852.214-71 Restrictions on alternate item(s).

852.214-72 Alternate item(s).

852.214-73 Alternate packaging and packing.

852.214-74 Bid samples.

852.216-70 Estimated quantities.

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.

852.229-70 Sales or use taxes.

852.229-71 [Reserved].

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 [Reserved].

852.236-74 Inspection of construction.

852.236-75 [Reserved].

852.236-76 Correspondence.

852.236-77 Reference to "standards."

852.236-78 Government supervision.

852.236-79 Daily report of workers and material.

852.236-80 Subcontracts and work coordination.

852.236-81 [Reserved].

852.236-82 Payments under fixed-price construction contracts (without NAS).

852.236-83 Payments under fixed-price construction contracts (including NAS).

- 852.236-84 Schedule of work progress.  
 852.236-85 Supplementary labor standards provisions.  
 852.236-86 Worker's compensation.  
 852.236-87 Accident prevention.  
 852.236-88 Contract changes—supplement.  
 852.236-89 Buy American Act.  
 852.236-90 Restriction on submission and use of equal products.  
 852.236-91 Special notes.  
 852.237-7 Indemnification and medical liability insurance.  
 852.237-70 Contractor responsibilities.  
 852.246-70 Guarantee.  
 852.246-71 Inspection.  
 852.246-72 Frozen processed foods.  
 852.246-73 Noncompliance with packaging, packing and/or marking requirements.  
 852.246-74 Special warranties.  
 852.246-75 Warranties for construction—guarantee period services.  
 852.247-70 Determining transportation costs for bid evaluation.  
 852.252-70 Solicitation provisions or clauses incorporated by reference.  
 852.270-1 Representatives of contracting officers.  
 852.270-2 Bread and bakery products—quantities.  
 852.270-3 Purchase of shellfish.  
 852.271-70 Nondiscrimination in services provided to beneficiaries.  
 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. 501 and 8151-8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

### Subpart 852.1—Instructions for Using Provisions and Clauses

#### 852.101 Using Part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision 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 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—Texts of Provisions and Clauses

#### 852.203-70 Commercial advertising.

As prescribed in 803.570-2, insert the following clause:

#### Commercial Advertising (JAN 2008)

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs

endorses a product, project or commercial line of endeavor.

(End of Clause)

#### 852.203-71 Display of Department of Veterans Affairs hotline poster.

As prescribed in 803.7001, insert the following clause:

#### Display of Department of Veterans Affairs Hotline Poster (DEC 1992)

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently, in common work areas within business segments performing work under VA contracts, Department of Veterans Affairs Hotline posters prepared by the VA Office of Inspector General.

(b) Department of Veterans Affairs Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043-4647.

(c) The Contractor need not comply with paragraph (a) above if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of Clause)

#### 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:

#### 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 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 (JAN 2008)**

(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 and 48 CFR 809.503.

(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)

#### **852.211-70 Service data manuals.**

(a) As prescribed in 811.107(a), insert the following clause:

#### **Service Data Manuals (NOV 1984)**

(a) The successful bidder will supply operation/maintenance (service data) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in (b) through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his/her responsibility in supplying the technical data called for therein.

(b) *Title Page and Front Matter.* The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustrations and a frontispiece (photograph or line drawing) depicting the equipment.

(c) *Section I, General Description.* This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) *Section II, Installation.* Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.).

(e) *Section III, Operation.* Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used

wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein. When applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions that are software related.

(f) *Section IV, Principles of Operation.* This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) *Section V, Maintenance.* The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficient data will be provided to enable their purchase by the Department of Veterans Affairs. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided

describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) *Section VI, Replacement Parts List.* The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) *Section VII, Drawings.* Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or production sketches.

(End of Clause)

Alternate I (JAN 2008). If the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, insert the following paragraph:

(j) *Initial purchase.* The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.211-70(a) to the Service and Reclamation Division, Hines, IL. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.211-70(a) with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(b) As prescribed in 811.107(b), insert the following clause:

Service Data Manuals, Mechanical Equipment (JAN 2008)

The contractor agrees to furnish two hard copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of Clause)

#### 852.211-71 Special notice.

As prescribed in 870.112, insert the following provision:

Special Notice (JAN 2008)

*Descriptive literature.* The submission of descriptive literature with offers is not required and voluntarily submitted

descriptive literature that qualifies the offer will require rejection of the offer. However, within 5 days after award of the contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements. The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment being proposed. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefore. If the equipment is disapproved by the Government, the contractor will be subject to action under the Default or Termination for Cause provision of this contract. However, prior to default or termination for cause action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of Provision)

#### 852.211-72 Technical industry standards.

As prescribed in 811.103-70, insert the following provision:

Technical Industry Standards (JAN 2008)

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the [ ]\* and [ ]\* as to [ ]\*\*. The successful bidder or offeror will be required to submit proof that the item(s) he/she furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. Proof may also be furnished in the form of a certificate from one of the above listed organizations certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of Provision)

\*Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

\*\*Insert pertinent standards, e.g., fire and casualty, safety and fire protection.

#### 852.211-73 Brand name or equal.

As prescribed in 811.104-71, insert the following clause:

Brand Name or Equal (JAN 2008)

(Note: As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in the bid that the bidder is offering an "equal" product, the bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information that is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to:

(i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and

(ii) Establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall:

(i) Include in his/her bid a clear description of such proposed modifications, and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of Clause)

#### 852.211-74 Liquidated damages.

As prescribed in 811.503 and 836.206, the contracting officer may insert the following clause when appropriate:

#### Liquidated Damages (JAN 2008)

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of Clause)

#### 852.211-75 Product specifications.

As prescribed in 811.204, insert the following clause:

#### Product Specifications (JAN 2008)

The products offered under this solicitation shall be type \_\_\_\_\_, grade \_\_\_\_\_, in accordance with [type of specification] No. \_\_\_\_\_, dated \_\_\_\_\_ and amendment \_\_\_\_\_ dated \_\_\_\_\_, except for paragraphs \_\_\_\_\_ and \_\_\_\_\_ which are amended as follows: [List any amendments to the specifications]

(End of Clause)

#### 852.214-70 Caution to bidders—bid envelopes.

As provided in 814.201-6(a), the following provision will be included in all invitations for bid:

#### Caution to Bidders—Bid Envelopes (JAN 2008)

It is the responsibility of each bidder to take all necessary precautions, including the use of proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, use any suitable envelope, identified by the invitation number and bid opening time and date. If an Optional Form (OF) 17, Sealed Bid Label, is furnished with this invitation in lieu of a bid envelope, the bidder is advised to complete and affix the OF 17 to the lower left corner of the envelope used in submitting the bid.

(End of Provision)

#### 852.214-71 Restrictions on alternate item(s).

As prescribed in 814.201-6(b)(1), insert the following provision:

#### Restrictions on Alternate Item(s) (JAN 2008)

Bids on [ ]\* will be considered only if acceptable bids on [ ]\*\* are not received or do not satisfy the total requirement.

(End of Provision)

\*Contracting officer will insert an alternate item that is considered acceptable.

\*\*Contracting officer will insert the required item and item number.

#### 852.214-72 Alternate item(s).

As prescribed in 814.201-6(b)(2), insert the following provision:

#### Alternate Item(s) (JAN 2008)

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 [ ]\*\*.

(End of Provision)

\*Contracting officer will insert an alternate item that is considered acceptable.

\*\*Contracting officer will insert the required item and item number.

#### 852.214-73 Alternate packaging and packing.

As prescribed in 814.201-6(b)(3), insert the following provision:

#### Alternate Packaging and Packing (JAN 2008)

The bidder's 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)

#### 852.214-74 Bid samples.

As prescribed in 814.201-6(c), insert the following provision:

#### Bid Samples (JAN 2008)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked 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). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all changes pertaining to the preparation and transportation of bid sample(s) must be prepaid by the bidder. Bid sample(s) must be received at the location specified in the solicitation by the time and date for receipt of bids.

(End of Provision)

#### 852.216-70 Estimated quantities.

As prescribed in 816.504(a), insert the following clause:

#### Estimated Quantities (APR 1984)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso

that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

*Alternate I (APR 1984).* As prescribed in 816.504(b), insert the following clause:

**Estimated Quantities (APR 1984)**

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

*Alternate II (APR 1984).* As prescribed in 816.504(c), insert the following clause:

**Estimated Quantities (APR 1984)**

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of Clause)

*Alternate III (JUL 1989).* As prescribed in 816.504(d), insert the following clause:

**Estimated Quantities (JUL 1989)**

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

**§ 852.222–70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.**

As prescribed in 822.305, for nursing home care requirements, insert the following clause:

**Contract Work Hours and Safety Standards Act—Nursing Home Care Contract Supplement (JAN 2008)**

The following exemption to FAR clause 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, applies to this contract: A contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), provided:

(a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(b) 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;

(c) 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

(d) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of Clause)

**§ 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 (JAN 2008)**

(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 agreement. 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 of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a 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 contemplated, 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 installation, 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 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)

**§ 852.229–70 Sales or use taxes.**

As prescribed in 829.302–70, insert the following provision:

**Sales or Use Taxes (JAN 2008)**

This provision replaces paragraph (k) of Federal Acquisition Regulation clause 52.212–4, Contract Terms and Conditions—Commercial Items. The articles listed in this solicitation will be purchased from the personal funds of patients and prices submitted herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this solicitation.

(End of Clause)

**§ 852.229–71 [Reserved].**

**§ 852.233–70 Protest content/alternative dispute resolution.**

As prescribed in 833.106, insert the following provision:

Protest Content/Alternative Dispute Resolution (JAN 2008)

(a) Any protest filed by an interested party shall:

- (1) Include the name, address, fax number, 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/offerors 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)

**§ 852.233-71 Alternate protest procedure.**

As prescribed in 833.106, insert the following provision:

Alternate Protest Procedure (JAN 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or for solicitations issued by the Office of Construction and Facilities Management, the Director, Office of Construction and Facilities Management, 810 Vermont Avenue, NW., Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(End of Provision)

**§ 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 (JUL 2002)

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

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of Clause)

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

As prescribed in 836.501, insert the following clause:

Performance of Work by the Contractor (JUL 2002)

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

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included 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, supervisory 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 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.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(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 1 (Date).* For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) 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.

(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.

**852.236-73 [Reserved].**

**852.236-74 Inspection of construction.**

As prescribed in 846.312, insert the following clause:

Inspection of Construction (JUL 2002)

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

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of Clause)

**852.236-75 [Reserved].**

**852.236-76 Correspondence.**

As prescribed in 836.570, insert the following clause:

Correspondence (APR 1984)

All correspondence relative to this contract shall bear the Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

(End of Clause)

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

As prescribed in 836.571, insert the following clause:

## Reference to "Standards" (JUL 2002)

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in the specifications.

(End of Clause)

**852.236-78 Government supervision.**

As prescribed in 836.572, insert the following clause:

## Government Supervision (APR 1984)

(a) The work will be under the direction of the Department of Veterans Affairs contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

(c) 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.

(End of Clause)

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

As prescribed in 836.573, insert the following clause:

## Daily Report of Workers and material (APR 1984)

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work that they perform, such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of Clause)

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

As prescribed in 836.574, insert the following clause:

## Subcontracts and Work Coordination (APR 1984)

(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 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 or otherwise objectionable.

(End of Clause)

*Alternate I (JUL 2002).* 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 2 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 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 sepia 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 request 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.

**852.236-81 [Reserved].****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)."

## Payments Under Fixed-Price Construction Contracts (APR 1984)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 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 subparagraph 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 branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many sub-branches as are necessary to cover all component parts of the contract work.

(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 sub-branches, as applied to each branch, shall equal the total cost of such branch. The total cost of all branches 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 below 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

**VALUE OF ADJUSTING CORRECTING, AND TESTING SYSTEM—Continued**

System	Percent
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 his/her 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 such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in

accordance with the contractual arrangements with them.

(f) 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 things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

*Alternate I (JUL 2002).* 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.

**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 (JUL 2002)**

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

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where the 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 either to meet schedules in Section Network Analysis System (NAS), or to process the Interim Arrow Diagram/ Complete Project Arrow Diagram;

(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 subparagraph 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 (NAS) 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, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this section. The percentages listed below will be used to determine the cost of adjust and test activities 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—Continued

System	Percent
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 his/her 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 such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in

accordance with the contractual arrangements with them.

(f) 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 things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

*Alternate I (JUL 2002).* 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) network 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 CMP 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.

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

As prescribed in 836.575, insert the following clause:

**Schedule of Work Progress (NOV 1984)**

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system .....	10
Incinerators (medical waste and trash) .....	5

progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of Clause)

#### **852.236-85 Supplementary labor standards provisions.**

As prescribed in 836.576, insert the following clause:

#### **Supplementary Labor Standards Provisions (APR 1984)**

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of Clause)

#### **852.236-86 Workers' compensation.**

As prescribed in 836.577, insert the following clause:

#### **Workers' Compensation (JAN 2008)**

Public Law 107-217 (40 U.S.C. 3172) authorizes the constituted authority of States to apply their workers compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

#### **852.236-87 Accident prevention.**

As prescribed in 836.513, insert the following clause:

#### **Accident Prevention (SEP 1993)**

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with FAR 52.236-13, Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of Clause)

#### **852.236-88 Contract changes—supplement.**

As prescribed in 836.578, insert the following clause:

#### **Contract Changes—Supplement (JUL 2002)**

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

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

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.403, the cost or pricing data shall be submitted in accordance with FAR 15.403-5.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal, which includes the information required by paragraph (a)(1), for cost of changes in work within 30 calendar days.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (a)(1) or (a)(2) of this clause is not received within 30 calendar days or if agreement has not been reached.

(4) 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.

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

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data or information other than cost or pricing data are required under FAR 15.403, the data shall be submitted in accordance with FAR 15.403-5. No itemized breakdown will be required for proposals amounting to less than \$1,000.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit within 30 calendar days, a proposal that includes the information required by paragraph (b)(1) for the cost of the changes in work.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (b)(1) or (b)(2) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(4) 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 use of construction 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. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7-1/2 percent overhead and 7-1/2 percent profit on the next \$30,000; 5 percent overhead and 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(5) The prime contractor's or upper-tier subcontractor's fee on work performed by

lower-tier subcontractors will be based on 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 Cause)

*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 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:

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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

(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 (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 professional 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 if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of 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.

(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.

(End of Clause)

#### **852.237-70 Contractor responsibilities.**

As prescribed in 837.110, insert the following clause:

#### **Contractor Responsibilities (APR 1984)**

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 [ ]. 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 there from.

(End of Clause)

#### **852.246-70 Guarantee.**

As prescribed in 846.302-70, insert the following clause:

#### **Guarantee (JAN 2008)**

The contractor guarantees the equipment against defective material, workmanship and performance for a period of [ ]<sup>1</sup>, 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.<sup>2</sup>

(End of Clause)

<sup>1</sup> 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.

<sup>2</sup> The above clause will be modified to conform to standards of the industry involved.

#### **852.246-71 Inspection.**

As prescribed in 846.302-71(a), insert the following clause:

#### **Inspection (JAN 2008)**

Rejected goods will be held subject to contractors order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the contractor's account.

(End of Clause)

*Alternate 1 (JAN 2008).* As provided in 846.302-71(b), insert the following clause:

#### **Inspection (JAN 2008)**

The contractor shall remove rejected 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)

#### **852.246-72 Frozen processed foods.**

As prescribed in 846.302-72, insert the following clause:

#### **Frozen Processed Foods (JAN 2008)**

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)

**852.246-73 Noncompliance with packaging, packing, and/or marking requirements.**

As prescribed in 846.302-73, insert the following clause:

**Noncompliance With Packaging, Packing and/or Marking Requirements (JAN 2008)**

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)

**852.246-74 Special warranties.**

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

**Special Warranties (JAN 2008)**

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)

**852.246-75 Warranty for construction—guarantee period services.**

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

**Warranty for Construction—Guarantee Period Services (JAN 2008)**

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 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)

**852.247-70 Determining transportation costs for bid evaluation.**

As prescribed in 847.305-70, insert the following provision:

**Determining Transportation Costs for Bid Evaluation (APR 1984)**

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.

**ANTICIPATED DEMAND**

Area destination	Factor
Oakland, California .....	3
Dallas, Texas .....	3
Omaha, Nebraska .....	3
Fort Wayne, Indiana .....	4
Atlanta, Georgia .....	3
New York, New York .....	5
Total of factors .....	20

(End of Provision)

**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)

**852.270-2 Bread and bakery products—quantities.**

As prescribed in 870.111-3, insert the following clause:

**Bread and Bakery Products—Quantities (JAN 2008)**

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Department of Veterans Affairs.

(End of Clause)

**852.270-3 Purchase of shellfish.**

As prescribed in 870.111-3, insert the following clause:

**Purchase of Shellfish (APR 1984)**

The bidder 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)

**852.271-70 Nondiscrimination in services provided to beneficiaries.**

As prescribed in 837.110-70 and 871.212, insert the following provision:

### Nondiscrimination in Services Provided to Beneficiaries (JAN 2008)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Department of Veterans Affairs, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Provision)

### 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.

(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 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)

### 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)

### 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 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)

### 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)

## 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).
- 853.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).
- 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.
- 853.236-70 VA Form 10-6298, Architect-Engineer Fee Proposal.
- 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 1.301-1.304.

#### 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.

The VA forms may be obtained from any VA contracting office or by requesting such forms from the Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

### 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).

#### 853.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services:

(a) VA Forms 90-2138, Order for Supplies or Services, or 90-2138-ADP, Purchase Order for Supplies or Service, shall be used as indicated in 813.307. They may be used in lieu of OF 347, Order of Supplies and Services, or Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

(1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10-7079, Request for Outpatient Medical Services.

(3) VA Form 10-2570d, Dental Record Authorization and Invoice for Outpatient Service.

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

(d) VA Form 10-2421, Prosthetics Authorization and Items and Services, will be used for indicated procurements not to exceed \$300 as prescribed in 813.307.

#### 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 establishing contract nursing home care for VA beneficiaries.

#### 853.236 Construction and architect-engineer contracts.

##### 853.236-70 VA Form 10-6298, Architect-Engineer Fee Proposal.

VA Form 10-6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606-71.

#### 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 on the Web at <http://www.va.gov/vaforms/>.

## SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

## PART 870—SPECIAL PROCUREMENT CONTROLS

### Subpart 870.1—Controls

Sec.

- 870.111 Subsistence.
- 870.111-3 Contract clauses.
- 870.111-5 Frozen processed food products.
- 870.112 Telecommunications equipment.
- 870-113 Paid use of conference facilities.
- 870.115 Food service equipment.

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

### Subpart 870.1—Controls

#### 870.111 Subsistence.

##### 870.111-3 Contract clauses.

(a) The contracting officer shall include the clause at 852.270-2, Bread and bakery products—quantities, in solicitations and contracts for bread and bakery products.

(b) The contracting officer shall include the clause at 852.270-3, Purchase of shellfish, in solicitations and contracts for shellfish.

##### 870.111-5 Frozen processed food products.

(a) The following frozen processed food products must have a label complying with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), which requires that all ingredients be listed according to the order of their predominance:

- (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.

(b) 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.

(c) 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 operated under the supervision of the Department of Commerce (DOC). The products listed in DOC's publication "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, DOC. 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 DOC seal indicating compliance with DOC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the condition in paragraph (c)(1) of this section was not met (no seal), the shipment may be lot-inspected by the DOC, and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(d) 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.

#### **870.112 Telecommunications equipment.**

(a) The contracting officer must include the clause at 852.211-71, Special notice in solicitations, including those for construction, that are based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in VA manual MP-6, Part VIII (available at any VA facility).

(b) The Telecommunications Support Service must review and approve the descriptive literature required by the clause in 852.211-71, Special notice, furnished by the contractor after award, before delivery or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it, together with a copy of the contract, the formal specification, or the detailed purchase description, to the DSPE.

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Before award, contracting officers will forward to the DSPE the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors before receiving Central Office's response.

(3) The solicitation must allow at least 30 calendar days for acceptance to allow sufficient time for the review required by this paragraph. (See FAR 52.214-16.)

#### **870.113 Paid use of conference facilities.**

When contracting for the use of conference facilities, contracting officers shall follow and comply with the Federal Travel Regulation, 41 CFR Part 301-74, Conference Planning, and shall document the contract file as specified therein, including documentation of efforts to locate Government-owned space and efforts to reduce costs.

#### **870.115 Food service equipment.**

(a) All new food service equipment purchased for Dietetic Service through other than Defense General Supply Center sources must meet requirements set forth by the National Sanitation Foundation.

(b) The contracting officer will accept an affixed National Sanitation Foundation label and/or documentation of the certification by the National Sanitation Foundation from the contractor as evidence that the subject equipment meets sanitation standards issued by the National Sanitation Foundation.

### **PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS**

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**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

#### **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, management, 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 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 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.

#### **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 VA negotiates contracts for tuition, fees, books, supplies, and other allowable expenses incurred by an institution, training establishment, or employer for the training and rehabilitation of eligible veterans under 38 U.S.C. Chapter 31 when the following services are provided:

(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 that are furnished at the request of the VA.* Special services or courses are those services or courses that VA requests that are over and above those the institution customarily provides for similarly circumstanced non-veterans and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

##### **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 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 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 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 nonveterans.

(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.**

Contracting officers must 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:

(a) 852-271-70 Nondiscrimination in services provided to beneficiaries.

(b) 852.271-72 Time spent by counselee in counseling process.

(c) 852.271-73 Use and publication of counseling results.

(d) 852.271-74 Inspection.

(e) 852.271-75 Extension of contract period.

### **PART 872—[RESERVED]**

### **PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES**

Sec.

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- 873.102 Definitions.
- 873.103 Priority sources.
- 873.104 Competition requirements.
- 873.105 Acquisition planning.
- 873.106 Presolicitation exchanges with industry.
- 873.107 Socioeconomic programs.
- 873.108 Publicizing contract actions.
- 873.109 General requirements for acquisition of health-care resources.
- 873.110 Solicitation provisions.
- 873.111 Acquisition strategies for health-care resources.
- 873.112 Evaluation information.
- 873.113 Exchanges with offerors.
- 873.114 Best value pool.
- 873.115 Proposal revisions.
- 873.116 Source selection decision.
- 873.117 Award to successful offeror.
- 873.118 Debriefings.

**Authority:** 38 U.S.C. 501 and 8151-8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

#### **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 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 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 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.

(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 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 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)

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