

## DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 815, 816, 837, 849, 852, and 871

RIN 2900-AQ20

### VA Acquisition Regulation: Contracting by Negotiation; Service Contracting

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR concerning Contracting by Negotiation and Service Contracting, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulation System, Types of Contracts, Termination of Contracts, Solicitation Provisions and Contract Clauses, and Loan Guaranty and Vocational Rehabilitation and Employment Programs.

**DATES:** Comments must be received on or before November 6, 2018 to be considered in the formulation of the final rule.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to “RIN 2900-AQ20—VA Acquisition Regulation: Contracting by Negotiation; Service Contracting.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B,

between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ricky L. Clark, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 632-5276. This is not a toll-free number.

#### SUPPLEMENTARY INFORMATION:

##### Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by an Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C.1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at title 48 CFR, chapter 8, parts 801 to 873.

##### Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted

from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in VA Acquisition Manual (VAAM) as internal agency guidance.

##### VAAR Part 801—Department of Veterans Affairs Acquisition Regulation System

In the table in 801.106, we propose to amend the clause number 852.237-7 to 852.237-70 to conform to the FAR numbering system for agency regulations.

##### VAAR Part 815—Contracting by Negotiation

We propose to add 41 U.S.C. 1702 as an authority for part 815, which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

We also propose to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

In subpart 815.3, Source Selection, we propose to remove 815.303, Responsibilities, to the VAAM since it contains procedural guidance that is internal to the VA and will be updated and moved to the VA Acquisition Manual (VAAM).

We propose to remove 815.304, Evaluation factors and significant subfactors, and move it to the VAAM as it contains procedural guidance that is internal to the VA and will be updated and moved to the VAAM.

We propose to amend section 815.304-70, Evaluation factor commitments, by deleting paragraph (a)(4). This paragraph was removed because the VA Mentor-Protégé Program is no longer current. We propose to revise the section by removing paragraph (b) and moving it to the VAAM as it contains procedural information. We also propose to renumber the paragraphs of the section accordingly.

We propose to amend section 815.304-71, Solicitation provision and clause, to make a correction to add in the words “Small Business” that are

missing in the current version of the VAAR.

In subpart 815.3, Source Selection, we propose to add a new section, 815.370, Only one offer. This is a newly developed section for VA. The inclusion of this policy gives the contracting officer the ability to re-solicit for an action if they only receive one offer and if the solicitation gave offerors less than 30 days to submit a proposal. The following sections have been added to this section and provide additional guidance pertaining to this new policy: 815.370-1, Policy; 815.370-2, Promote competition; 815.370-3, Fair and reasonable price, 815.370-4, Exceptions and 815.370-5, Solicitation provision. These subsections under section 815.370 explain that it is VA policy, if only one offer is received in response to a competitive solicitation, to take action to promote competition and ensure that the price is fair and reasonable. It describes the necessary steps to meet these requirements. Section 815.370-4, Exceptions, cites the exceptions to the policy and 815.370-5, Solicitation provision, prescribes the inclusion of 852.215-72, Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at 815.370-4 applies.

We propose to remove subpart 815.4, Contract Pricing, as it contains procedural guidance that is internal to the VA and will therefore be moved to the VAAM.

We propose to remove subpart 815.6, Unsolicited Proposals, as it contains procedural guidance that is internal to the VA and will therefore be moved to the VAAM.

#### **VAAR Part 816—Types of Contracts**

The authority citation for part 816 is revised to correct the citation for 41 U.S.C. 1121 by adding reference to paragraph (c)(3).

In subpart 816.5, we propose to add section 816.506-70, Requirements—supplement for mortuary services, prescribing clause 852.216-76, Requirements—Supplement for Mortuary Services, for all contracts for mortuary services.

#### **VAAR Part 837—Service Contracting**

We propose to amend the authority citation for part 837 to add reference to the Crime Control Act of 1990 and the Pro-Children Act of 2001 which provide the authority for new clauses that address protection of children under contracts providing child care services. We also propose to add 41 U.S.C.

1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 837 authorities to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. 38 U.S.C. 501 is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR.

We propose to remove section 837.103, Contracting officer responsibility, and to address the subject of documenting personal versus non-personal services determinations in the VAAM.

We propose to remove the title and text at section 837.110, Solicitation provisions and contract clauses, since FAR 52.237-2 Protection of Government Buildings, Equipment and Vegetation and 852.228-71, Indemnification and Insurance, outline contractor liabilities and required insurance levels.

We propose to amend section 837.110-70, Services provided to eligible beneficiaries, to retitle it “VA solicitation provisions and contract clauses,” to remove the prescription for the clause, 852.271-70, Nondiscrimination in services provided to beneficiaries, and to add the prescriptions for the new clauses 852.237-74, Nondiscrimination in Service Delivery, and 852.237-75, Key Personnel.

In subpart 837.2, Advisory and Assistance Services, and section 837.203, Policy, we propose to remove the entire subpart since it duplicates coverage in FAR.

In subpart 837.4, Nonpersonal Health Care Services, section 837.403, Contract clause, we propose to amend the section to redesignate it as section 837.403-70, VA contract clauses; to renumber clause 852.237-7, Indemnification and Medical Liability Insurance, as 852.237-70 to conform to the FAR guidance for numbering of clauses; to insert in the clause a five day notice requirement for evidence of coverage and of any change in insurance providers during the term of the contract; and to add prescriptions for three new clauses that address

protection of children under contracts providing child care services as required by FAR 37.103(d); 852.237-71, Nonsmoking Policy for Children Services; 852.237-72, Crime Control Act—Reporting of Child Abuse; and 852.237-73, Crime Control Act—Requirement for Background Checks.

We propose the following revisions to subpart 837.70, Mortuary Services, to remove internal and outdated guidance and to address only acquisition policy affecting mortuary services:

We propose to add section 837.7000, Scope, and to cite the statutory basis for the mortuary service benefits covered.

We propose to remove the existing section 837.7001, General, and add a new section 837.7001, Solicitation provisions and contract clauses, to prescribe one new provision, 852.237-76, Award to Single Offeror; and four new clauses specific to the coverage of mortuary services: 852.237-77, Area of Performance, which describes the contractor’s responsibilities both within and outside of the contract designated area of performance and the basis for payment of any transportation fees for pick-up from or delivery points outside that area; 852.237-78, Performance and Delivery, which requires the contractor’s response to requests for services within 36 hours and allows the Government to require that the remains be held for up to 72 hours from completion of services; 852.237-79, Subcontracting, which stipulates that the Contractor shall not subcontract any work under this contract without the contracting officer’s written approval and states the clause does not apply to contracts of employment between the Contractor and its personnel; and 852.237-80, Health Department and Transport Permits, which requires to contractor to meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. We also propose to add a cross-reference to the availability of clauses prescribed in 816.506-70 and 849.504-70.

We propose to remove sections 837.7002, List of qualified funeral directors; 837.7003, Funeral authorization; 837.7004, Administrative necessity; and 837.7005, Unclaimed remains—all other cases, because this material is based on internal VA guidance that has been rescinded.

#### **VAAR Part 849—Termination of Contracts**

We propose to revise the authority citation for part 849 to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that

speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 849 authorities to add 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency.

In part 849, we propose to add subpart 849.5, Contract Termination Clauses, section 849.504, Termination of fixed-price contracts for default, which contains no text but implements FAR 49.504, and section 849.504–70, Termination of mortuary services, to prescribe a new clause 852.249–70, Termination for Default—Supplement for Mortuary Services.

#### **VAAR Part 852—Solicitation Provisions and Contract Clauses**

We propose to amend the authority citation for part 852 to add reference to the 20 U.S.C. 7181–7183 (Pro-children Act of 2001), and Public Law 101–647, (Crime Control Act of 1990) which provided the authority for new clauses that address protection of children under contracts providing child care services. We also propose to add as an authority 41 U.S.C. 1303, which is an updated positive law codification to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

In subpart 852.2, we propose to amend 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors. This was revised to change it from a clause to a provision and language was added to comply with the statute that requires that any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years.

We propose to amend 852.215–71, Evaluation Factor Commitments. This was revised to add language to comply with the statute that requires that any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/

VOSB status is subject to debarment for a period of not less than five years.

We propose to add clause 852.215–72, Notice of Intent to Re-Solicit, which informs offerors that in the event that only one offer is received in response to a solicitation that allows offerors fewer than 30 days to submit their proposal, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with 815.370–2.

We propose to add clause 852.216–76, Requirements—Supplement for Mortuary Services, for all requirements contracts for mortuary services.

We are providing the final publication and effective dates of March 2018 for the following clauses published in final under rule AP82: 852.216–71, 852.216–72, 852.216–73, 852.216–74, 852.216–75, 852.228–71, and 852.228–73.

We propose to remove the title and text of clause 852.237–70, Contractor Responsibilities, which is determined to be unnecessary since FAR clause 52.237–2, Protection of Government Buildings, Equipment and Vegetation, and VAAR clause 852.228–71, Indemnification and Insurance, both outline contractor liabilities and required insurance levels.

We propose to revise clause 852.237–7, Indemnification and Medical Liability Insurance, to renumber it 852.237–70, and to make minor revisions to require the contracting officer to insert the dollar amount values of standard coverages 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; and to insert a requirement for the contractor to notify the contracting officer within 5 days of becoming aware of a change in insurance providers during the performance period of the contract for all health-care providers performing under it; and to furnish to the contracting officer evidence of insurance at least five days before commencement of work.

We propose to add the following clauses to address protection of children under contracts providing child care services as required by 20 U.S.C. 7181–7183 (Pro-Children Act of 2001), and Public Law 101–647, (Crime Control Act of 1990): 852.237–71, Nonsmoking Policy for Children's Services, prohibiting smoking in facilities where certain federally funded children's services are provided; 852.237–72, Crime Control Act—Reporting of Child Abuse, which imposes responsibilities on certain individuals who, while engaged in a professional capacity or

activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse; and 852.237–73, Crime Control Act—Requirement for Background Checks, which requires the contractor's compliance with the Act requiring that all individuals involved with the provision of child care services, as defined in the act, to children under the age of 18 undergo a criminal background check.

We propose to add new clause 852.237–75, Key Personnel, requiring the written consent of the Contracting Officer to changes in key personnel, and new clauses specific to the coverage of mortuary services: 852.237–76, Award to Single Offeror, to stipulate that awards will be made to a single offeror rather than to multiple offerors; 852.237–77, Area of Performance, to clarify Contractor's responsibilities for its designated area of service; 852.237–78, Performance and Delivery, to specify the required time frame for completion of services and the Government's right to require a hold on services; 852.237–79, Subcontracting, to require the Contracting Officer's written approval to subcontract any work; and 852.237–80, Health Department and Transport Permits, to stipulate the contractor's responsibility to obtain all transport permits required under the contract at no additional cost to the Government.

We propose to add the clause 852.249–70, Termination for Default—Supplement for Mortuary Services, for use in contracts for mortuary services. This clause expressly identifies actions, such as soliciting families of decedents to provide additional services, subcontracting services without Government consent, or refusing to perform services for any particular remains.

We propose to redesignate and retitle clause 852.271–70, Non-discrimination in Services Provided to Beneficiaries, as 852.237–74, Non-discrimination in Service Delivery, and prescribed the clause at under VAAR section 837.110–70(a) to conform to FAR structure. This clause states that it is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). This clause also stipulates that by acceptance of this contract, the contractor agrees to comply

with this policy in supporting the program and in performing the services called for under this contract. The clause is revised to clarify the language and the contractor's obligation to ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

#### **VAAR Part 871—Loan Guaranty and Vocational Rehabilitation and Employment Programs**

In the authority citation for part 871, we propose to add 41 U.S.C. 1121(c)(3) which is from Title 41, Public Contracts, Positive Law codification that speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose to revise the part 871 authorities to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency. 38 U.S.C. 501 is a more general authority for the Secretary to utilize to prescribe all rules and regulations. The title 41 authority is more appropriate to cite when publishing the VAAR. In section 871.212, we propose to revise this section to redesignate the first paragraph as (a); to remove the prescription of clause 852.271–70, Nondiscrimination In Services Provided To Beneficiaries; to renumber the remaining paragraphs as (1) through (4); and to add new paragraph (b) to refer the contracting officer to section 837.110–70(a) for the prescription of the new clause 852.237–74, Non-discrimination In Service Delivery.

#### **Effect of Rulemaking**

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR

or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

#### **Executive Orders 12866, 13563 and 13771**

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines "significant regulatory action" to mean 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 this Executive Order." VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined this rule is not a significant regulatory action under E.O. 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date.

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi). This proposed rule will impose one new and one amended information collection requirement. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action OMB for its review. Notice of OMB approval for the new information collection and the information collection amendment will be published in a future **Federal Register** document.

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), a current collection of information, OMB No. 2900–0590, contained in part 837 at proposed section 837.403–70 (currently numbered 837.403) and in part 852 at proposed section 852.237–70 (currently numbered 852.237–7), is being revised as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. The clause number that appears in the table at 801.106 is also proposed to be revised accordingly.

*Summary of collection of information:* This action contains provisions constituting an existing information collection at 48 CFR 837.403 and 852.237–7, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) and has been assigned OMB control number 2900–0590. This action proposes revisions to 837.403 to renumber it as 837.403–70, to retitle it as "VA contract clauses," and to renumber the clause as 852.237–70 while retaining the title, "Indemnification and Medical Liability Insurance."

Clause 852.237–70 is used in lieu of FAR clause 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for the acquisition of non-personal health care services. It requires the apparent successful bidder/offeror, upon the request of the contracting officer, prior to contract award, to furnish evidence of insurability of the offeror and/or all health-care providers who will perform under the contract. In addition, the clause requires the contractor, prior to commencement of services under the contract, to provide Certificates of Insurance or insurance policies evidencing that the firm possesses the types and amounts of insurance

required by the solicitation. We propose to modify the collection to require the contractor to notify the contracting officer within five days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract, and to provide to the contracting officer evidence of such insurance for any subcontractor at least five days before commencement of work by that subcontractor.

*Description of need for information and proposed use of information:* The information is required in order to protect VA by ensuring that the firm to which award may be made and the individuals who may provide health care services under the contract are insurable and that, following award, the contractor and its employees will continue to possess the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor or its employees and ensures that VA and VA beneficiaries will be protected by adequate insurance coverage. The clause number is changed to 852.237-70 to conform to the FAR guidance for numbering of clauses. The burden imposed by this collection remains unchanged as follows:

*Estimated number of respondents annually:* 1,500.

*Estimated frequency of responses:* One response for each contract to be awarded.

*Estimated average burden per collection:* 30 minutes.

*Estimate of the total annual hour burden of the collection of information:* 750 hours.

*Annual cost to all respondents:* \$15,000 (at \$20 per hour, based on our belief that the majority of the labor effort would be clerical similar to GS-5).

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), a new collection of information is proposed, under OMB No. 2900-AQ20, that is contained in Part 837 at proposed section 837.403-70 and Part 852 at proposed clause 852.237-73, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. The clause number and the OMB clearance number would be added to the table at 801.106.

*Summary of collection of information:* Under the Crime Control Act of 1990 (42 U.S.C. 13041), each agency of the Federal Government, and every facility operated by the Federal Government, or operated under contract with the Federal Government, that hires, or contracts for hire, individuals involved

with the provision of child care services to children under the age of 18 shall assure that all existing and newly-hired employees undergo a criminal history background check.

New VAAR clause 852.237-73, Crime Control Act—Requirement for Background Checks, is required in all solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child-(day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the statute.

*Description of need for information and proposed use of information:* The contract clause would require the contractor to perform the background checks on behalf of VA to assure the safety of children under the age of 18 that are recipients of services under a VA program. It is intended to assure their safety by avoiding hiring individuals with a history of criminal acts and especially acts of child abuse.

*Estimated number of respondents annually:* 500.

*Estimated frequency of responses:* 20 per contract awarded.

*Estimated average burden per collection:* 1 hour.

*Estimate of the total annual hour burden of the collection of information:* 10,000 hours.

*Annual cost to all respondents:* \$550,000 (\$55 rate including fringe benefits and assuming senior level (GS-13) technical specialist).

This clause would enable the VA to be in compliance with the Crime Control Act of 1990 and to protect children that are within its health care systems.

Interested persons have 60 days in which to provide comment on the information collection. The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026, email to [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate they are submitted in response to "RIN 2900-AQ20."

Individuals are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

### Regulatory Flexibility Act

This proposed 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. This proposed rule will generally be small business neutral. The overall impact of the proposed rule will be of benefit to small businesses owned by Veterans or Service-Disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA estimates no cost impact to individual business would result from these rule updates. On this basis, the adoption of this proposed 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. Therefore, under 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### 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 the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal Governments or on the private sector.

#### List of Subjects

##### 48 CFR Part 801

Administrative practice and procedure.

##### 48 CFR Parts 815, 816, 837, and 849

Government procurement.

##### 48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

##### 48 CFR Part 871

Government procurement, Loan programs—social programs, Loan programs—veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.

#### Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on August 20, 2018, for publication.

Dated: August 21, 2018.

#### Consuela Benjamin,

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 48 CFR parts 801, 815, 816, 837, 849, 852 and 871 as follows:

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

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

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

#### Subpart 801.1—Purpose, Authority, Issuance

##### 801.106 [Amended]

■ 2. Amend the table in section 801.106 by removing clause number 852.237–7 and adding in its place clause number 852.237–70.

### PART 815—CONTRACTING BY NEGOTIATION

■ 3. The authority citation for part 815 is revised to read as follows:

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

#### Subpart 815.3—Source Selection

##### 815.303 [Removed]

■ 4. Section 815.303 is removed.

##### 815.304 [Removed]

■ 5. Section 815.304 is removed.

■ 6. Section 815.304–70 is revised to read as follows:

#### 815.304–70 Evaluation factor commitments.

VA contracting officers shall—

(a) Include the provision at 852.215–70, Service-Disabled Veteran Owned Small Business (SDVOSB) and Veteran Owned Small Business (VOSB) Evaluation Factors, in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

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

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

■ 7. Section 815.340–71 is revised to read as follows:

#### 815.304–71 Solicitation provision and clause.

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

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

■ 8. Section 815.370 is added to read as follows:

#### 815.370 Only one offer.

■ 9. Section 815.370–1 is added to read as follows:

#### 815.370–1 Policy.

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

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

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

■ 10. Section 815.370–2 is added to read as follows:

#### 815.370–2 Promote competition.

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

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

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

■ 11. Section 815.370–3 is added to read as follows:

#### 815.370–3 Fair and reasonable price.

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

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

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

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

at FAR 15.403–1(b) applies, the cost or pricing data shall be certified; and

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

■ 12. Section 815.370–4 is added to read as follows:

#### **815.370–4 Exceptions.**

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

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

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

(3) Small business set-asides under FAR subpart 19.5, set asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the VA Small Business Program (see VAAR 819), or the Women-Owned Small Business Program (see FAR 19.1505(d));

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

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

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

■ 13. Section 815.370–5 is added to read as follows:

#### **815.370–5 Solicitation provision.**

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

#### **Subpart 815.4—[Removed and Reserved]**

■ 14. Subpart 815.4 is removed and reserved.

#### **Subpart 815.6—[Removed and Reserved]**

■ 15. Subpart 815.6 is removed and reserved.

### **PART 816—TYPES OF CONTRACTS**

■ 16. The authority citation for part 816 is revised to read as follows:

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

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

■ 17. Section 816.506–70 is added to read as follows:

##### **816.506–70 Requirements—supplement for mortuary services.**

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

### **PART 837—SERVICE CONTRACTING**

■ 18. The authority citation for part 837 is revised to read as follows:

**Authority:** Public Law 101–647; 20 U.S.C. 7181–7183; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

#### **Subpart 837.1—Service Contracts—General**

##### **837.103 [Removed]**

■ 19. Section 837.103 is removed.

##### **837.110 [Removed]**

■ 20. Section 837.110 is removed.

■ 21. Section 837.110–70 is revised to read as follows:

##### **837.110–70 VA solicitation provisions and contract clauses.**

(a) Contracting officers shall include the clause at 852.237–74, Nondiscrimination in Service Delivery, in all solicitations and contracts covering services provided to eligible beneficiaries.

(b) The contracting officer shall insert the clause at 852.237–75, Key Personnel, in solicitations and contracts when the contracting officer will require the contractor to designate contractor key personnel.

#### **Subpart 837.2—[Removed and Reserved]**

■ 22. Subpart 837.2 is removed and reserved.

##### **837.203 [Removed]**

■ 23. Section 837.203 is removed.

#### **Subpart 837.4—Nonpersonal Health Care Services**

■ 24. Section 837.403 is revised to read as follows:

##### **837.403–70 VA contract clauses.**

(a) The contracting officer shall insert the clause at 852.237–70,

Indemnification and Medical Liability Insurance, in lieu of FAR clause 52.237–7, in solicitations and contracts for nonpersonal health-care services, including contracts awarded under the authority of 38 U.S.C. 7409, 38 U.S.C. 8151–8153, and part 873. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR part 13 and part 813.

(b) The contracting officer shall insert the clause at 852.237–71, Nonsmoking Policy for Children’s Services, in solicitations, contracts, and orders that involve health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Nonsmoking Policy for Children’s Services (20 U.S.C. 6081–6084).

(c) The contracting officer shall insert the clause at 852.237–72, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal land or in a federally operated (or contracted) facility and involve the professions/ activities performed by persons specified in the Crime Control Act of 1990 (42 U.S.C. 13031) including, but not limited to, teachers, social workers, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(d) The contracting officer shall insert the clause at 852.237–73, Crime Control Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (42 U.S.C. 13041).

#### **Subpart 837.70—Mortuary Services**

■ 25. Section 837.7000 is added to read as follows:

##### **837.7000 Scope.**

This subpart applies to mortuary (funeral and burial) services for beneficiaries of VA as provided in 38 U.S.C. 2302, 2303, and 2308 when it is determined that a contract would be the most efficient and effective method. Contract payment terms for use of the purchase card as a method of payment should also be considered.

■ 26. Section 837.7001 is revised to read as follows:

**837.7001 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the basic or the alternate of the provision at 852.237–76, Award to Single Offeror, in solicitations and contracts for mortuary services as follows:

(1) Insert the provision in all sealed bid solicitations for mortuary services; and

(2) Insert the basic provision with its alternate I in all negotiated solicitations for mortuary services.

(b) The contracting officer shall insert in addition to FAR 52.216–21 Requirements, ALT VI, the following VA clauses in all mortuary service solicitations and contracts:

(1) 852.237–77, Area of Performance.

(2) 852.237–78, Performance and Delivery.

(3) 852.237–79, Subcontracting.

(4) 852.237–80, Health Department and Transport Permits.

(c) See also 816.506–70 and 849.504–70 for additional clauses for use in contracts for mortuary services.

**837.7002 [Removed]**

■ 27. Section 837.7002 is removed.

**837.7003 [Removed]**

■ 28. Section 837.7003 is removed.

**837.7004 [Removed]**

■ 29. Section 837.7004 is removed.

**837.7005 [Removed]**

■ 30. Section 837.7005 is removed.

**PART 849—TERMINATION OF CONTRACTS**

■ 31. The authority citation for part 849 is revised to read as follows:

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

■ 32. Subpart 849.5 is added to read as follows:

**Subpart 849.5—Contract Termination Clauses****849.504 Termination of fixed-price contracts for default.****849.504–70 Termination of mortuary services.**

Use the clause at 852.249–70, Termination for Default—Supplement for Mortuary Services, in all solicitations and contracts for mortuary services. This clause is to be used with FAR clause 52.249–8, Default (Fixed-Price Supply and Service).

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

■ 33. The authority citation for part 852 is revised to read as follows:

**Authority:** Public Law 101–647; 20 U.S.C. 7181–7183; 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

**Subpart 852.2—Texts of Provisions and Clauses**

■ 34. Section 852.215–70 is revised to read as follows:

**852.215–70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.**

As prescribed in 815.304–71(a), insert the following provision:

**Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors (Date)**

(a) In an effort to achieve socioeconomic small business goals, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database.

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VIP database.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of provision)

■ 35. Section 85.215–71 is revised to read as follows:

**852.215–71 Evaluation Factor Commitments.**

As prescribed in 815.304–71(b), insert the following clause:

**Evaluation Factor Commitments (Date)**

(a) The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(b) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

■ 36. Section 852.215–72 is added to read as follows:

**852.215–72 Notice of Intent to Re-Solicit.**

As prescribed at 815.370–5, use the following provision:

**Notice of Intent To Re-Solicit (Date)**

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with 815.370–2.

(End of provision)

■ 37. Section 852.216–71 is amended by revising the section heading and clause heading to read as follows:

**852.216–71 Economic Price Adjustment of Contract Price(s) Based on a Price Index.**

\* \* \* \* \*

**Economic Price Adjustment of Contract Price(s) Based on a Price Index (Mar 2018)**

\* \* \* \* \*

■ 38. Section 852.216–72 is amended by revising the section heading and clause heading to read as follows:

**852.216–72 Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.**

\* \* \* \* \*

**Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index (Mar 2018)**

\* \* \* \* \*

■ 39. Section 852.216–73 is amended by revising the section heading and clause heading to read as follows:

**852.216–73 Economic Price Adjustment—State Nursing Home Care for Veterans.**

\* \* \* \* \*

**Economic Price Adjustment—State Nursing Home Care for Veterans (Mar 2018)**

\* \* \* \* \*

■ 40. Section 852.216–74 is amended by revising the section heading and clause heading to read as follows:

**852.216–74 Economic Price Adjustment—Medicaid Labor Rates.**

\* \* \* \* \*

**Economic Price Adjustment—Medicaid Labor Rates (Mar 2018)**

\* \* \* \* \*

■ 41. Section 852.216–75 is amended by revising the section heading and clause heading to read as follows:

**852.216–75 Economic Price Adjustment—Fuel Surcharge.**

\* \* \* \* \*

**Economic Price Adjustment—Fuel Surcharge (Mar 2018)**

\* \* \* \* \*

■ 42. Section 852.216–76 is added to read as follows:

**852.216–76 Requirements—Supplement for Mortuary Services.**

As prescribed in 816.506–70, insert the following clause:

**Requirements—Supplement for Mortuary Services (Date)**

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

- (1) The supplies or services being ordered;
- (2) The quantities to be furnished;
- (3) Delivery or performance dates;
- (4) Place of delivery or performance;
- (5) Packing and shipping instructions;
- (6) The address to send invoices; and
- (7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

(End of clause)

■ 43. Section 852.228–71 is amended by revising the section heading and clause heading to read as follows:

**852.228–71 Indemnification and Insurance.**

\* \* \* \* \*

**Indemnification and Insurance (Mar 2018)**

\* \* \* \* \*

■ 44. Section 852.228–73 is amended by revising the section heading and clause heading to read as follows:

**852.228–73 Indemnification of Contractor—Hazardous Research Projects.**

\* \* \* \* \*

**Indemnification of Contractor—Hazardous Research Projects (Mar 2018)**

\* \* \* \* \*

**852.237–70 [Removed]**

■ 45. Section 852.237–70 is removed.

**852.237–7 [Redesignated as 852.237–70 and Amended]**

■ 46. Section 852.237–7 is redesignated as section 852.237–70 and the newly redesignated section is revised to read as follows:

**852.237–70 Indemnification and Medical Liability Insurance.**

As prescribed in 837.403–70(a), insert the following clause:

**Indemnification and Medical Liability Insurance (Date)**

(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 within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

■ 47. Section 852.237–71 is added to read as follows:

**852.237–71 Nonsmoking Policy for Children's Services.**

As prescribed in 837.403–70(b), insert the following clause:

**Nonsmoking Policy for Children's Services (Date)**

(a) Smoking in facilities where certain federally funded children's services are provided shall be prohibited. The Pro-Children Act of 2001 (20 U.S.C. 7181–7183) prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

■ 48. Section 852.237-72 is added to read as follows:

**852.237-72 Crime Control Act—Reporting of Child Abuse.**

As prescribed in 837.403-70(c), insert the following clause:

**Crime Control Act—Reporting of Child Abuse (Date)**

(a) Public Law 101-647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

■ 49. Section 852.237-73 is added to read as follows:

**852.237-73 Crime Control Act—Requirement for Background Checks.**

As prescribed in 837.403-70(d), insert the following clause:

**Crime Control Act of 1990—Requirement for Background Checks (Date)**

(a) Public Law 101-647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services, as defined in the Act, to children under the age of 18 undergo a criminal background check.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under the contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

■ 50. Section 852.237-74 is added to read as follows:

**852.237-74 Non-Discrimination in Service Delivery.**

As prescribed in 837.110-70(a), the Contracting Officer shall insert the following clause in solicitations and contracts:

**Non-Discrimination in Service Delivery (Date)**

It is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

■ 51. Section 852.237-75 is added to read as follows:

**852.237-75 Key Personnel.**

As prescribed in 837.110-70(b), insert the following clause:

**Key Personnel (Date)**

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract. If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the

Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

(End of clause)

■ 52. Section 852.237-76 is added to read as follows:

**852.237-76 Award to Single Offeror.**

As prescribed in 837.7001(a)(1), insert the following provision:

**Award to Single Offeror (Date)**

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

*Alternate 1 (DATE).* As prescribed in 837.7001(a)(2), insert the following paragraph (d) in lieu of paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

■ 53. Section 852.237-77 is added to read as follows:

**852.237-77 Area of Performance.**

As prescribed in 837.7001(b)(1), insert the following clause:

**Area of Performance (Date)**

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

■ 54. Section 852.237–78 is added to read as follows:

**852.237–78 Performance and Delivery.**

As prescribed in 837.7001(b)(2), insert the following clause:

**Performance and Delivery (Date)**

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible, but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection is completed.

(End of clause)

■ 55. Section 852.237–79 is added to read as follows:

**852.237–79 Subcontracting.**

As prescribed in 837.7001(b)(3), insert the following clause:

**Subcontracting (Date)**

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

■ 56. Section 852.237–80 is added to read as follows:

**852.237–80 Health Department and Transport Permits.**

As prescribed in 837.7001(b)(4), insert the following clause:

**Health Department and Transport Permits (Date)**

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

■ 57. Section 852.249–70 is added to read as follows:

**852.249–70 Termination for Default—Supplement for Mortuary Services.**

As prescribed in 849.504–70, insert the following clause:

**Termination for Default—Supplement for Mortuary Services (Date)**

The clause entitled "Default" in FAR 52.249–8, is supplemented as follows:

The Contracting Officer may terminate this contract for default by written notice without

the ten-day notice required by paragraph (a)(2) of the Default clause if—

(a) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Veteran Affairs in fulfilling its responsibility for proper care of remains;

(b) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(c) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(d) The Contractor refuses to perform the services required for any particular remains; or

(e) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

**852.271–70 [Removed and Reserved]**

■ 58. Section 852.271–70 is removed and reserved.

**PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS**

■ 59. The authority citation for part 871 is revised to read as follows:

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

**Subpart 871.2—Vocational Rehabilitation and Employment Service**

■ 60. Section 871.212 is revised to read as follows:

**871.212 Contract clauses.**

(a) Contracting officers shall use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

(1) 852.271–72 Time Spent by Counselee in Counseling Process.

(2) 852.271–73 Use and Publication of Counseling Results.

(3) 852.271–74 Inspection.

(4) 852.271–75 Extension of Contract Period.

(b) See 837.110–70(a) for clause 852.237–74 Non-discrimination in Service Delivery.

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**DEPARTMENT OF VETERANS AFFAIRS**

**48 CFR Parts 801, 825, 836, 842, 846, 852 and 853**

**RIN 2900–AQ18**

**VA Acquisition Regulation: Construction and Architect-Engineer Contracts**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR concerning Construction and Architect-Engineer Contracts, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulations System, Foreign Acquisition, Contract Administration and Audit Services, Quality Assurance, Solicitation Provisions and Contract Clauses, and Forms.

**DATES:** Comments must be received on or before November 6, 2018 to be considered in the formulation of the final rule.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026 (this is not a toll-free number). Comments should indicate that they are