

satisfactory assurance from these contractors by executing a BAA.

(2) Contractors or other entities supporting VHA required to create, receive, maintain, or transmit VHA PHI shall be required to execute a BAA as mandated by the HIPAA Privacy Rule and requested by the contracting officer, the contracting officer's representative (COR) or the cognizant privacy officer—

(i) Whether via a contract or agreement with VHA; or

(ii) Whether provided from or through another VA administration or staff activity contract for supplies, services or support that involves performing a certain activity, function or service to, for, or on behalf of VHA (see VA Directive 6066, Protected Health Information (PHI) and Business Associate Agreements Management).

(d) *BAA requirement flow down to subcontractors.* A prime contractor required to execute a BAA shall also obtain a satisfactory assurance, in the form of a BAA, that any of its subcontractors who will also create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI will comply with HIPAA requirements to the same degree as the contractor. A contractor employing a subcontractor who creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such VHA PHI under a contract or agreement is required to execute a BAA with each of its subcontractors which also obligates the subcontractor (*i.e.*, also a business associate) to provide the same protections and safeguards and agree to the same disclosure restrictions to VHA's PHI that is required of the covered entity and the prime contractor.

[88 FR 4746, Jan. 25, 2023]

824.103-71 Liquidated damages—protection of information.

(a) *Purpose.* As required by 38 U.S.C. 5725 any contracts where sensitive personal information such as PHI must be disclosed to the contractor for the contractor to perform certain functions or services on behalf of VHA shall include a liquidated damages clause as prescribed at 811.503-70.

(b) *Applicability to contracts requiring Business Associate Agreements.* A liquidated damages clause is required (see 811.503-70) when performance under a contract requires a contractor to enter into a Business Associate Agreement with VHA because the contractor or its subcontractor is required to create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI, for certain services or functions, on behalf of VHA. The liquidated damages clause shall be added even in situations where the prime contractor never directly receives VA's sensitive personal information and the same flows directly to the prime contractor's subcontractor.

[88 FR 4746, Jan. 25, 2023]

Subpart 824.2—Freedom of Information Act

824.203 Policy.

(a) VA rules implementing the Freedom of Information Act (FOIA) are in 38 CFR 1.550 through 1.562.

(b) Upon receipt of a request, the contracting officer shall provide the requester with the name of the cognizant VA FOIA Service Office. The VA FOIA Service Office (see <http://www.oprm.va.gov/foia/>) is the focal point for all FOIA requests and official information may only be released through the cognizant FOIA Service or their authorized designee.

[84 FR 45681, Aug. 30, 2019]

PART 825 [RESERVED]

PART 826—OTHER SOCIOECONOMIC PROGRAMS

Subpart 826.2—Disaster or Emergency Assistance Activities

Sec.

826.202-1 Local area set-aside.

826.202-2 Evaluation preference.

AUTHORITY: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; 38 CFR 1.550-1.562 and 1.575-1.584; and 48 CFR 1.301-1.304.

SOURCE: 84 FR 45682, Aug. 30, 2019, unless otherwise noted.

Department of Veterans Affairs

826.202-2

**Subpart 826.2—Disaster or
Emergency Assistance Activities**

826.202-2 Evaluation preference.

826.202-1 Local area set-aside.

(c) The contracting officer shall determine whether a local area set-aside should be further restricted to verified Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs) pursuant to subpart 819.70.

Pursuant to 38 U.S.C. 8128, the contracting officer shall include evaluation factors in accordance with 815.304 and the evaluation criteria clause prescribed at 815.304-71(a), 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.