

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 486(c)

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 Architect-Engineer and Construction clauses are numbered 852.236-70, 852.236-71, etc.).

[50 FR 794, Jan. 7, 1985]

852.102 Incorporating provisions and clauses by reference.

(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), the contracting officer shall insert the provision found at 852.252-1, Provisions or clauses requiring completion by the offeror or prospective contractor, 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 in the quotation, solicitation, or contract the title of the provision or clause and the full text of the paragraph that requires completion. The balance of the provision or clause may be incorporated by reference.

(c) If 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) If 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.arnet.gov/far/>

(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://www.va.gov/oa&mm/vaar/>

[64 FR 69935, Dec. 15, 1999]

Subpart 852.2—Texts of Provisions and Clauses

852.203-71 Display of VA hotline poster.

As prescribed in 803.7002, insert the following clause:

DISPLAY OF VA HOTLINE POSTER

(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, VA Hotline posters prepared by the VA Office of Inspector General.

(b) VA 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)

[57 FR 58718, Dec. 11, 1992, as amended at 63 FR 69223, Dec. 16, 1998]

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-75, the following clause will be included in A-76 cost comparison solicitations:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (OCT 1988)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any permanent Federal employee who is assigned to the government commercial activity, or

(ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the

contractor is unable to fill with personnel in the contractor's employee at the time of the contract award, including positions within a 50 mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's re-assignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees 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 employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than five 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.

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) By contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees 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 for salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 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 five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 working days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees 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 employees to other Federal positions.

(3) For a period up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualification determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees 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) *Relation 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 handicapped persons.

(h) *Penalty for Noncompliance.* Failure of the contractor to comply with any provision of this clause may be grounds for termination for default.

(End of clause)

[53 FR 43211, Oct. 26, 1988; 53 FR 46872, Nov. 21, 1988]

852.209-70 Organizational conflicts of interest.

The following provision will be used as prescribed in 809.508-2:

ORGANIZATIONAL CONFLICTS OF INTEREST
(APR 1984)

(a) The offeror represents to the best of his/her knowledge and belief that the award of the contract would not involve organizational conflicts of interest as defined in this representation. The term organizational conflicts of interests shall mean that a relationship exists whereby an offeror or a contractor (including his/her chief executive, directors, proposed consultants and sub-contractors) has interests which may: (1) Diminish his/her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or (2) result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(b) Based on this representation and any other information solicited by the contracting officer, it may be determined organizational conflicts of interest exist which would warrant disqualifying the contractor for award of the contract unless the organizational conflicts of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. In the case of a formally advertised solicitation, the apparent successful offeror may enter into a supplemental agreement which mitigates the organizational conflicts of interest.

(c) Nondisclosure or misrepresentations of 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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.211-70 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical and other technical equipment and devices issued by a field facility will normally require the contractor to provide operating and maintenance manuals.

(b) The purpose of the requirement is for the manufacturer to provide the Department of Veterans Affairs a manual or groups of manuals that will allow the in-house repair of the equipment purchased. Unless the facility Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical or other technical equipment and devices will include the following clauses for operating and maintenance manuals:

SERVICE DATA MANUAL (NOV 1984)

(a) The successful bidder will supply operation/service (maintenance) 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 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.

Where 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 which 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)

(c) Solicitations and requests for proposals for mechanical equipment (other than technical medical equipment and devices) issued by a field facility will include the following clause:

SERVICE DATA MANUAL (NOV 1984)

The contractor agrees to furnish two 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)

(d) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

SERVICE DATA MANUAL (NOV 1984)

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, Ill. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.211-70(a) above with each piece of equipment sold as a result of the invitation for bid or request for proposal.

852.211-71

(End of clause)

[50 FR 795, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996. Redesignated at 63 FR 17338, Apr. 9, 1998, and amended at 63 FR 69223, Dec. 16, 1998]

852.211-71 Guarantee clause.

(a) When the bid or proposal will result in any purchase of equipment, the following clause will be used:

GUARANTEE (NOV 1984)

The contractor guarantees the equipment against defective material, workmanship and performance for a period of _____,¹ 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 which 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.²

(End of clause)

(b) Where it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to: (1) Guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems); or (2) require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts, the clause used will be compatible with such policy.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985. Redesignated at 63 FR 17338, Apr. 9, 1998]

¹Normally, 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.

²The above clause will be modified to conform to standards of the industry involved.

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852.211-72 Inspection.

(a) Contracts for property, other than packing house and dairy products and fresh and frozen fruits and vegetables will contain the following clause:

REJECTED GOODS (NOV 1984)

Rejected goods will be held subject to contractor's 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 which have been rejected will be charged to the contractor's account.

(End of clause)

(b) Contracts for packinghouse and dairy products, bread and bakery products and for fresh and frozen fruits and vegetables will contain the following clause:

REJECTED GOODS

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985. Redesignated at 63 FR 17338, Apr. 9, 1998]

852.211-73 Frozen processed foods.

The following clause will be included in all solicitations for the purchase of frozen processed foods, issued by a field facility:

FROZEN PROCESSED FOODS (NOV 1984)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989. Redesignated at 63 FR 17338, Apr. 9, 1998]

Department of Veterans Affairs

852.211-75

852.211-74 Telecommunications equipment.

(a) When a detailed purchase description of formal specification is the basis for solicitations for telecommunications equipment as defined in VA Manual MP-6, Part VIII, (available at any Department of Veterans Affairs facility), solicitations, including those for construction, will include the following provision:

SPECIAL NOTICE (APR 1984)

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature which qualifies the offer will require rejection of the offer.

However, within 5 days after award of 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 proposed to be furnished. 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 therefor.

If the equipment is disapproved by the Government, the contractor will be subject to action under the Default provision of this contract. However, prior to default 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)

(b) The descriptive literature to be furnished by the contractor after award in accordance with paragraph (a) of this section is subject to the controls established in 870.112(b).

(c) The time of delivery or performance to be specified in the solicitation will include the time required for submission, receipt, the evaluation and approval required by 870.112(b) of this

chapter, and return to the contractor of the descriptive literature.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985. Redesignated at 63 FR 17338, Apr. 9, 1998]

852.211-75 Technical industry standards.

When items are required to conform to technical industry standards, such as those adopted by Underwriter's Laboratories, Incorporated; Factory Mutual Laboratories; American Gas Association; American Society Mechanical Engineers; National Electrical Manufacturers' Association; American Society Heating, Refrigeration 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 following provision will be used unless comparable provisions are contained in the item specification:

TECHNICAL INDUSTRY STANDARDS (APR 1984)

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the _____³ and _____³ as to _____.⁴ The successful bidder or offeror will be required to submit proof that the item(s) he 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. The seal or label of any nationally recognized laboratory such as those listed by the National Fire Protection Association, Boston, Massachusetts, in the current edition of their publication "Research on Fire," is acceptable. Proof may also be furnished in the form of a certificate from one of these laboratories certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

³Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

⁴Insert pertinent standards, i.e. fire and casualty, safety and fire protection, etc.

852.211-76

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985. Redesignated at 63 FR 17338, Apr. 9, 1998]

852.211-76 Noncompliance with packaging, packing, and/or marking requirements.

The following clause will be included in contracts for supplies for delivery to supply distribution warehouses or depots for storage and subsequent issue to a using activity. It may also be included when appropriate when delivery is direct to a using activity.

NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS (JUL 1989)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 30045, July 18, 1989; 61 FR 11587, Mar. 21, 1996. Redesignated at 63 FR 17338, Apr. 9, 1998]

852.211-77 Brand name or equal.

The brand name or equal clause when used as prescribed by 811.104 will be as follows:

BRAND NAME OR EQUAL (NOV 1984)

(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 de-

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scribed 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 his bid that he is offering an "equal" product, his 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 which 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, illustration, 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)

[50 FR 796, Jan. 7, 1985, as amended at 53 FR 7756, Mar. 10, 1988. Redesignated and amended at 63 FR 17338, Apr. 9, 1998]

852.211-78 Liquidated damages.

As prescribed in 811.504 and 836.206, the contracting officer may insert the following clause when appropriate:

Department of Veterans Affairs

852.214-73

PARTIAL PERFORMANCE AND ACCEPTANCE (APR 1984)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985. Redesignated and amended at 63 FR 17338, Apr. 9, 1998]

852.214-70 Caution to bidders—bid envelopes.

As provided in 814.201, the following provision will be prominently placed on all IFB's:

CAUTION TO BIDDERS—BID ENVELOPES (APR 1984)

It is the responsibility of each bidder to take all necessary precautions, including the use of a 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, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left-hand corner of the envelope used in submitting the bid.

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.214-71 Alternate items.

As prescribed in 814.201, consideration of alternate items may be appropriate. The following provisions may be used under the specified conditions:

(a) When an alternate item is to be considered only if no bids or insufficient bids are received on the item desired, the following will be included in the invitation:

ALTERNATE ITEM(S) (APR 1984)

Bids on _____⁵ will be considered only if acceptable bids on _____⁶ are not received or do not satisfy the total requirement.

(End of provision)

(b) When an alternate item will be considered on an equal basis with the item specified, the following will be included in the invitation:

ALTERNATE ITEM(S) (APR 1984)

Bids _____⁵ will be given equal consideration along with the _____⁶ and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of.⁶

(End of provision)

(c) In addition to the clause in paragraph (a) or (b) of this section, the following provision will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

ALTERNATE PACKAGING AND PACKING (APR 1984)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

852.214-73 Bid samples.

As prescribed in 814.202-4, insert the following provision:

BID SAMPLES (SEP 1993)

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 charges pertaining to the preparation and transportation of bid sample(s) must be prepaid by

⁵Contracting officer will insert an alternate item that is considered acceptable.

⁶Contracting officer will insert the required item and item number.

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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)

[58 FR 48974, Sept. 21, 1993]

852.216-70 Estimated quantities for requirements contracts.

(a) When definite quantities cannot be determined, solicitations for facility-level requirements contracts will contain the applicable clause as set forth below. Solicitations issued by the VA National Acquisition Center will contain provisions developed by that Center for particular application to its operations, subject to legal review as prescribed in 801.602-70(c)(1).

(b) The following clause will be used for general equipment, supplies and services:

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)

(c) The following clause will be used in local coal-hauling contracts.

ESTIMATED QUANTITY

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,

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except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

(d) The following clause will be used for orthopedic, prosthetic, and optical supplies.

QUANTITIES

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)

(e) The following clause will be used for National Cemetery System contracts for monuments:

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 or 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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 54 FR 30045, July 18, 1989; 63 FR 69223, Dec. 16, 1998]

852.219-70 Veteran-owned small business.

As prescribed in 819.7003(b), the following certification will be made a part of all solicitations and all requests for quotations:

VETERAN-OWNED SMALL BUSINESS (DEC 1990)

The offeror represents that the firm submitting this offer () is () is not, a veteran-owned small business, () is () is not, a Vietnam era veteran-owned small business, and () is () is not, a disabled veteran-owned small business. A veteran-owned small business is

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defined as a small business, at least 51 percent of which is owned by a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For the purpose of this definition, eligible veterans include:

(a) A person who served in the U.S. Armed Forces and who was discharged or released under conditions other than dishonorable.

(b) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged under conditions other than dishonorable.

(c) Disabled veterans with a minimum compensable disability of 30 percent, or a veteran who was discharged for disability.

Failure to execute this representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award (see FAR 14.405).

(End of provision)

[50 FR 796, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989, as amended at 55 FR 49901, Dec. 3, 1990; 61 FR 11587, Mar. 21, 1996; 63 FR 17338, Apr. 9, 1998]

852.222-70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.

As prescribed in 822.304, nursing home care contracts will include the following clause.

CONTRACT WORKHOURS AND SAFETY STANDARD ACT—NURSING HOME CARE CONTRACT SUPPLEMENT (APR 1984)

In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 1720 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80

hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 63 FR 69223, Dec. 16, 1998]

852.228-70 Bond premium adjustment.

The following clause will be utilized as prescribed by 828.106-70.

BOND PREMIUM ADJUSTMENT (APR 1984)

When net changes in original contract price affect the premium of a Corporate Surety Bond by \$5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 64 FR 40519, July 27, 1999]

852.229-70 Purchases from patient's funds.

When contracts are for items to be purchased solely from personal funds of patients, the following tax provision will be used in lieu of the Federal, State and local tax clause in FAR 52.229-1 or, if the contract is for commercial items, in lieu of paragraph (k), Taxes, in FAR clause 52.212-4:

SALES OR USE TAXES (APR 1984)

The articles listed in this bid invitation will be purchased from personal funds of patients and prices bid 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 bid.

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 63 FR 17339, Apr. 9, 1998]

852.229-71 Purchases for patients using Government funds and/or personal funds of patients.

When contracts are for items to be purchased from both Government funds and personal funds of patients, the following provision will be included as a part of the Federal, State, and local

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tax clause in FAR 52.229-1 or, if the contract is for commercial items, as an addendum to FAR clause 52.212-4:

SALES OR USE TAXES (APR 1984)

Any article purchased from this contract, payable from personal funds of patients, will be subject to any applicable sales or use tax levied thereon by any State, or by duly constituted taxing authority therein having jurisdiction to levy such a tax; the total amount of the tax applicable to such purchase payable from personal funds of patients will be computed on the total amount of the order and will be shown as a separate item on the purchase order and invoice. The bidder shall identify the applicable taxes and rates in his/her bid.

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 63 FR 17339, Apr. 9, 1998]

852.233-70 Protest content.

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

PROTEST CONTENT (JAN 1998)

(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.

(End of provision)

[63 FR 15320, Mar. 31, 1998]

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852.233-71 Alternate Protest Procedure.

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

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 Facilities Management, the Chief Facilities Management Officer, Office of 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.

[63 FR 15320, Mar. 31, 1998]

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 67 FR 49260, July 30, 2002]

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 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 interests 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 I (JUL 2002) 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 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.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985; 53 FR 1631, Jan. 21, 1988; 53 FR 2669, Jan. 29, 1988; 67 FR 49260, July 30, 2002]

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 67 FR 49261, July 30, 2002]

852.236-76 Correspondence.

As prescribed in 836.570, insert the following clause:

CORRESPONDENCE (APR 1984)

All correspondence relative to this contract shall bear Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

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(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40066, Sept. 29, 1989; 67 FR 49261, July 30, 2002]

852.236-77 Reference to “standards.”

As prescribed in 836.571, insert the following clause:

REFERENCE TO “TANDARDS” (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 specifications.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 67 FR 49261, July 30, 2002]

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 67 FR 49261, July 30, 2002]

852.236-79 Daily report of workers and materials.

As prescribed in 836.573, insert the following clause:

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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 which 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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 67 FR 49261, July 30, 2002]

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 sepias 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 which 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 coordi-

nation 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.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 67 FR 49261, July 30, 2002]

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

(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 below. The percentages listed below are proportions of the cost listed in 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
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 pre-

paring 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 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.

(i) 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.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 53 FR 1632, Jan. 21, 1988; 54 FR 40066, Sept. 29, 1989; 67 FR 49261, July 30, 2002]

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 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 below. 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.

VALUES OF ADJUSTING CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
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

VALUES OF ADJUSTING CORRECTING, AND TESTING SYSTEM—Continued

System	Percent
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

(End of clause)

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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 CPM 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.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 53 FR 1632, Jan. 21, 1988; 54 FR 40066, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996; 67 FR 49262, July 30, 2002]

(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 the 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.

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 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

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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)

[50 FR 794, 797, Jan. 7, 1985, as amended at 53 FR 1632, Jan. 21, 1988; 67 FR 49262, July 30, 2002]

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 Compli-

ance, or any other form containing the exact wording of this form.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 67 FR 49262, July 30, 2002]

852.236-86 Worker's compensation.

As prescribed in 836.577, insert the following clause:

WORKER'S COMPENSATION (JUL 2002)

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

(End of clause)

[67 FR 49262, July 30, 2002]

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)

[58 FR 48974, Sept. 21, 1993]

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) and (b) 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 with 30 calendar days a proposal, which 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 (a) and (b) 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; 7½ percent overhead and 7½ 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; 7½ 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 subcontractors' 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 subcontractor's 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 therefor. 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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 797, Jan. 7, 1985; 51 FR 23073, June 25, 1986; 52 FR 28559, 28561, July 31, 1987; 52 FR 32013, Aug. 25, 1987; 52 FR 49017, Dec. 29, 1987; 53 FR 1632, Jan. 21, 1988; 61 FR 11587, Mar. 21, 1996; 63 FR 69223, Dec. 16, 1998; 67 FR 49262, July 30, 2002]

852.236-89 Buy American Act.

As prescribed in 825.1102, insert the following clause:

BUY AMERICAN ACT (JUL 2002)

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

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

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

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

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

(End of Cause)

Alternate I (JUL 2002)

As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

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

(b) The restrictions contained in this clause 852.236-89 are waived for Trade Agreements Act (TAA) 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 TAA designated country construction material.

Alternate II (JUL 2002)

As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

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

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

[67 FR 49263, July 30, 2002]

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)

This clause applies to the following items:

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

(End of clause)

[52 FR 282, Jan. 5, 1987, as amended at 53 FR 7756, Mar. 10, 1988]

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, communication 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 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)

[53 FR 1632, Jan. 21, 1988, as amended at 61 FR 11587, Mar. 21, 1996; 67 FR 49263, July 30, 2002]

852.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 837.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY
INSURANCE (OCT 1996)

(a) It is expressly agreed and understood that this is a nonpersonal 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 insert the dollar 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)

[61 FR 52710, Oct. 8, 1996]

852.237-70 Contractor responsibilities.

(a) Fixed-Price negotiated or advertised service contracts, other than automobile, ambulance and aircraft services, will include 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 employee's 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 therefrom.

(End of clause)

(b) Automobile, ambulance and aircraft service contracts will utilize the clause prescribed in 852.237-71.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).

(a) Contracts for vehicle and aircraft services will utilize the following clause as provided in 828.306.

INDEMNIFICATION AND INSURANCE (APR 1984)

(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, workman's 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 Veterans' Administration installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (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)

(b) *Exceptions.* The provisions of this 852.237-71 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3. *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.246-1 Special warranties.

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

SPECIAL WARRANTIES (JUL 2002)

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.

[67 FR 49263, July 30, 2002]

852.246-2 Warranty for construction—guarantee period services.

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

WARRANTY FOR CONSTRUCTION—GUARANTEE PERIOD SERVICES (JUL 2002)

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

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR Section 52.249-10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

[67 FR 49261, July 30, 2002]

852.247-70 Transportation provision for bid evaluation.

In circumstance enunciated in 847.305-70, the following provision will be inserted in the IFB:

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DETERMINING TRANSPORTATION COSTS FOR BID EVALUATION (APR 1984)

(End of provision)

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.

[64 FR 69935, Dec. 15, 1999]

852.270-1 Representatives of contracting officers.

Whenever it is considered necessary to designate a representative under 801.603-70, the following provision will be made a part of the request for proposal or invitation to bid:

REPRESENTATIVES OF CONTRACTING OFFICERS (APR 1984)

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of the designee's authority. A copy of the designation shall be furnished the contractor.

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

ANTICIPATED DEMAND	
Area destination:	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985; 63 FR 69223, Dec. 16, 1998]

852.252-1 Provisions or clauses requiring completion by the offeror or prospective contractor.

As prescribed in 852.102(a), insert the following provision:

PROVISIONS OR CLAUSES THAT REQUIRE COMPLETION BY THE OFFEROR OR PROSPECTIVE CONTRACTOR (DEC 1999)

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.]

852.270-2 Bread and bakery products.

The following clause will be inserted in all contracts for bread and bakery products:

QUANTITIES (APR 1984)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.270-3 Purchase of shellfish.

Invitations for bids or requests for proposals covering oysters, clams or mussels, fresh or frozen, will contain the following clause:

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 shell fish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shell fish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in

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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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

852.270-4 Commercial advertising.

All VA contracts will include the following clause:

COMMERCIAL ADVERTISING (NOV 1984)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 798, Jan. 7, 1985]

852.271-70 Services provided eligible beneficiaries.

The following clause will be included in all contracts covering services provided to eligible beneficiaries:

NONDISCRIMINATION IN SERVICES PROVIDED BENEFICIARIES (APR 1984)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Under Secretary for Health, or designee, 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 clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 63 FR 17339, Apr. 9, 1998]

852.271-71 Visits to Department of Veterans Affairs guidance centers.

The following clause will be included in contracts entered into for services relating to vocational counseling:

48 CFR Ch. 8 (10-1-02 Edition)

INSPECTION (APR 1984)

Any duly authorized representative of the Department of Veterans Affairs shall at all reasonable times be permitted to inspect the counseling and testing operations being performed under this contract and the records of these operations.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-72 Time spent by counselee in counseling process.

Insert the following clause in contracts entered into for services relating to vocational counseling:

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-73 Use and publication of counseling results.

Insert the following clause in contracts entered into for services relating to vocational counseling:

PUBLISHING RESULTS (APR 1984)

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 63 FR 69223, Dec. 16, 1998]

852.271-74 Inspection.

Insert the following clause in contracts entered into with educational institutions and training establishments for education and rehabilitation:

Department of Veterans Affairs

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INSPECTION (APR 1984)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction as may be necessary and examine the training facilities and work of the veterans in training under this contract.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

852.271-75 Extension of contract period.

The following clause will be included in contracts where appropriate pertaining to services for education and rehabilitation:

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)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

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.

853.215 Contracting by negotiation (VA Form 10-1170).

853.236 Construction and architect-engineer contracts.

853.236-1 [Reserved]

853.236-2 Architect-engineer services (VA Form 08-6298).

853.271 Loan Guaranty, Education, and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

853.271-2 Vocational Rehabilitation and Counseling Programs (VA Forms 22-1903, 22-1905, and 22-1931).

853.271-3 Education Programs (VA Forms 22-1982, 22-1982e, 22-1982c, and 22-7398).

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

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

SOURCE: 49 FR 12639, Mar. 29, 1984, unless otherwise noted.

853.000 Scope of part.

This part prescribes Department of Veterans Affairs forms for use in the acquisition of goods and services. It only identifies forms which 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.

[49 FR 12639, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

Subpart 853.1—General

853.107 Obtaining forms.

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 (97), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

[49 FR 12639, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985; 54 FR 40066, Sept. 29, 1989; 63 FR 69223, Dec. 16, 1998]

Subpart 853.2—Prescription of Forms

853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

Current delegations of contracting authority appointed with VA Form 90-2267, Certificate of Designation (contracting officer), will remain in effect until replaced with an executed SF 1402, Certificate of Appointment, in accordance with 801.603-3.