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[62 FR 42929, Aug. 11, 1997]

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SUBCHAPTER A—GENERAL

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

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

SOURCE: 49 FR 12583, Mar. 29, 1984, unless otherwise noted.

801.000 Scope of part.

This part prescribes general policies and background regarding the Veterans Affairs Acquisition Regulation (VAAR). It includes information regarding the maintenance and administration of the VAAR and includes procedures for deviations from the VAAR and the Federal Acquisition Regulation (FAR).

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31961, Aug. 3, 1989; 63 FR 69217, Dec. 16, 1998]

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) This subpart establishes Chapter 8, Veterans Affairs Acquisition Regulation, of Title 48—Federal Acquisition Regulation System, Code of Federal Regulations.

801.103

(b) The VAAR must be utilized in conjunction with the FAR. The VAAR cannot be utilized by itself.

[49 FR 12583, Mar. 29, 1984, as amended at 63 FR 69217, Dec. 16, 1998]

801.103 Authority.

The VAAR and any amendments thereto are issued by the Secretary of Veterans Affairs as provided by 38 U.S.C. 501 and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31961, Aug. 3, 1989. Redesignated and amended at 63 FR 69217, Dec. 16, 1998]

801.104 Applicability.

(a) The FAR and the VAAR apply to all acquisitions of the Department (including construction) made with appropriated funds and procurements made with Supply Fund monies (38 U.S.C. 8121).

(b) The FAR and VAAR will apply to the special procurement programs authorized by Title 38 U.S. Code (Viz., Veterans Canteen Service and the Loan Guaranty programs), to the extent indicated in the VAAR.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 40062, Sept. 29, 1989. Redesignated and amended at 63 FR 69217, Dec. 16, 1998]

801.104-70 Exclusions.

The FAR and VAAR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe upon a donor's prerogative to specify the exact item to be purchased and/or the source of supply.

[49 FR 12583, Mar. 29, 1984. Redesignated at 67 FR 49257, July 30, 2002]

Subpart 801.2—Administration

801.201-1 The two councils.

A designee of the Office of Acquisition and Materiel Management will represent the Department of Veterans Affairs on the CAA (Civilian Agency Acquisition) Council.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

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Subpart 801.3—Department Acquisition Regulations

801.301 Policy.

(a) VAAR, amendments and interim changes thereto will be issued by the Secretary of Veterans Affairs after necessary reviews by cognizant VA officials.

(b) Implementing procedures, instructions and guidelines necessary to implement the VAAR and the FAR may be issued by the heads of contracting activities. Such issuances may include delegations of authority, review and approval for acquisition action up to the dollar level delegated to that contracting activity by this regulation as well as providing procedural guidance for users. Such issuances will be the minimum necessary to provide a logical implementation of FAR and VAAR requirements and will be internal to the facility, i.e., it will not specify reporting/recordkeeping requirements for the public (see 801.301-70(b)).

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 28559, July 31, 1987; 54 FR 31962, Aug. 3, 1989; 61 FR 20491, May 7, 1996]

801.301-70 Paperwork Reduction Act requirements.

(a) It is the policy of the Government to keep to the minimum the amount of recordkeeping and reporting required of the public. This objective applies to the Department of Veterans Affairs acquisition system.

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

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

(2) The Deputy Assistant Secretary for Acquisition and Materiel Management (95) will review the request and upon concurrence will likewise submit the request to Office of Management

Department of Veterans Affairs

801.601

and Budget (OMB) for approval as prescribed by the Paperwork Reduction Act of 1980. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will send the approval back to the requester with the OMB clearance number.

(c) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this VAAR have been approved by OMB and have been given the following approval numbers:

48 CFR part or section where identified and described	Current OMB control No.
809.504(d)	2900-0418
819.7003	2900-0445
836.606-71	2900-0422
852.207-70	2900-0590
852.219-70	2900-0584
852.211-70	2900-0587
852.211-74	2900-0588
852.211-75	2900-0586
852.211-77	2900-0585
852.214-70	2900-0593
852.236-72	2900-0422
852.236-79	2900-0422
852.236-80 (Alt. I)	2900-0422
852.236-82 through 852.236-85	2900-0422
852.236-88	2900-0422
852.236-89	2900-0622
852.236-91	2900-0623
852.237-7	2900-0590
852.237-71	2900-0590
852.270-03	2900-0589
871.201-2	2900-0416

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 790, Jan. 7, 1985; 54 FR 31962, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 63 FR 17335, Apr. 9, 1998; 63 FR 69217, Dec. 16, 1998; 67 FR 49258, July 30, 2002; 68 FR 3467, Jan. 24, 2003]

801.303 Publication and codification.

The VAAR is codified as chapter 8 of title 48, Code of Federal Regulations. Codified changes to the VAAR will be published in the FEDERAL REGISTER. The Deputy Assistant Secretary for Acquisition and Materiel Management arranges distribution of the issues to VA contracting activities and the Office of Acquisition and Materiel Management should be notified of changes to the distribution list.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

801.304 Department control and compliance procedures.

Office of Acquisition and Materiel Management is responsible for ensuring that the VAAR and amendments thereto are developed as prescribed by the FAR.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

Subpart 801.4—Deviations From the FAR or VAAR

801.403 Individual deviations.

(a) When contracting officers consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The request will clearly set forth the circumstances warranting the deviation and nature of the deviation.

(b) When a deviation in an individual case is authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, the authorization will be filed in the purchase or contract file, whichever is appropriate.

[54 FR 31962, Aug. 3, 1989, as amended at 61 FR 20491, May 7, 1996]

801.404 Class deviations.

The Deputy Assistant Secretary for Acquisition and Materiel Management is responsible for determining the need for class deviations. If determined necessary, the Deputy Assistant Secretary for Acquisition and Materiel Management will request deviation authority from the Deputy Secretary through the Senior Procurement Executive as well as complying with the provisions in FAR 1.404.

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 49016, Dec. 29, 1987; 54 FR 31962, Aug. 3, 1989]

Subpart 801.6—Career Development, Contracting Activity, and Responsibilities

801.601 General.

(a) This subpart establishes general contracting officer authority and responsibility. However, other provisions

801.602

in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.

(b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for purchases of supplies, equipment or services. Individuals making such commitments may be held financially liable for the amount of the obligation.

801.602 Contracting officers.

(a) Except as otherwise provided by law, VA regulations, VAAR and FAR, the authority vested in the Secretary to do the following is delegated to the Senior Procurement Executive and is further delegated to the Procurement Executive:

(1) Execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the acquisition of personal property, service (including architect-engineer services), construction, issuing Government bills of lading, and for the sale of personal property, leases, sales agreements and other transactions;

(2) Prescribe and publish acquisition policies and procedures;

(3) Establish clear lines of contracting authority;

(4) Manage and enhance career development of the procurement work force;

(5) Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where Governmentwide performance standards should be established and applied, and to participate in the development of Governmentwide procurement policies, regulations and standards; and,

(6) Oversee the competition advocate program.

(b) Further delegation to execute, award, and administer contracts, purchase orders and other agreements will be made in accordance with the Contracting Officer Certification Program

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as prescribed in (VAAR) 48 CFR 801.670 and 801.690.

[61 FR 1526, Jan. 22, 1996]

801.602-2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraph (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or telefaxing the default letter and related documents which are required to make an evaluation directly to the General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

(c) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31962, Aug. 3, 1989]

801.602-3 Ratification of unauthorized commitments.

(a) Contracting officers shall not ratify contractual commitments made by other VA personnel without prior approval as prescribed below. Such unauthorized commitments include commitments made by other contracting

officers which exceed their respective contracting authority as well as unauthorized commitments made by individuals lacking contracting authority.

(1) At field stations, for supplies, services and construction, the approving authority is the director of the field facility concerned.

(2) For central office contracting officers, for supplies, services, and construction, the approving authorities are the heads of the administrations and directors of the staff offices concerned, and the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For acquisitions of leasehold interest in real property the approving authority is:

(i) The Chief Facilities Management Officer, Office of Facilities Management, for 1-5,000 square feet, and for 1-100 parking spaces costing less than \$50,000 per annum.

(ii) The Assistant Secretary for Management for 5,001-20,000 square feet, and for parking spaces exceeding 100 which cost less than \$100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet and above, and for parking spaces exceeding 100 which cost more than \$100,000 per annum.

(4) This approval authority shall not be redelegated.

(b) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the approving authority specified in para-

graph (a) of this section with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of the General Counsel or the District Counsel, as appropriate.

(3) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(c) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

[54 FR 31962, Aug. 3, 1989, as amended at 61 FR 11585, Mar. 21, 1996; 63 FR 69217, Dec. 16, 1998]

801.602-70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management prior to contract execution. (Additionally, the Office of Acquisition and Materiel Management may, when considered necessary, request preaward technical review regardless of dollar value). Office of General Counsel legal reviews of such proposed contracts and agreements will be performed when requested and determined necessary by the Office of Acquisition and Materiel Management. (Excluded from this requirement is the National Acquisition Center which will perform its own technical reviews at the thresholds herein prescribed. The National Acquisition Center will receive preaward legal review of solicitation from the General Counsel staff located in Hines, Illinois).

(1) All negotiated and sealed bid contracts (except as specified in (a)(2) and (a)(3)) exceeding \$250,000 in either appropriated or nonappropriated funds. This includes indefinite quantity contracts when expenditures of \$250,000 or more can reasonably be expected, and multiyear contracts in which \$250,000

or more will be expended over the life of the contract. (Note also that multiyear contracts also require review any time the cancellation ceiling exceeds 20 percent of the contract amount (see 817.1)).

(2) All fixed price, sealed bid construction contracts involving \$500,000 or more in either appropriated or unappropriated funds.

(3) All 8(a) contracts exceeding \$500,000.

(4) All proposed agreements and contracts coming within the purview of one or more of the following:

(i) Contracts for insurance.

(ii) Utility service agreements involving \$50,000 or more.

(iii) Contracts for consulting services (see subpart 837.2) and management and professional services (see 837.271).

(iv) Contracts for research or research and development involving \$50,000 or more.

(v) Automatic data processing equipment, when purchased from other than a Federal Supply Schedule contract, involving \$50,000 or more.

(vi) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.

(vii) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151-8153.

(viii) Agreements with other Federal agencies regardless of dollar value. Those agreements of \$5,000 or more will be forwarded to General Counsel for legal review. VA/DoD Sharing Agreements executed under the authority of Public Law 97-174 (38 U.S.C. 8111) and sections 201-206 of Public Law 102-585 are exempt from review by the Office of Acquisition and Materiel Management; however, they must be approved in accordance with VA Manual M-1, Part I, Chapter 1, Section XI.

(ix) Contracts for ADP software exceeding \$10,000.

(x) ADP software licensing agreements for ADP software exceeding \$10,000 (all software licensing agreements require technical review).

(5) All proposed letter contracts and ensuing formal contracts involving expenditures of \$5,000 or more.

(6) Any proposed agreement that is unique, novel or unusual (including all consignment agreements, regardless of anticipated dollar value—except those established and provided in Federal Supply Schedule Contracts).

(7) Step One of two-step sealed bid procurements when the anticipated value is more than \$200,000.

(b) The following categories of proposed contractual actions require the concurrence of the General Counsel:

(1) Contract modifications, terminations (including final decision (cure) letters), disputes and claims in excess of \$25,000 (\$50,000 for contracts awarded by the Office of Facilities Management).

(2) Contract modifications granting a time extension of more than 20 days.

(3) Assignment of claims.

(4) Proposed awards to other than the low evaluated bidder/offeror.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, the following require review and concurrence of the General Counsel:

(1) Changes or revisions to all contract clauses.

(2) Changes or revisions to prescribed VA contract forms.

(d) Utility construction and connection contracts which are developed in the Office of Facilities Management and cost \$50,000 or more will be reviewed by General Counsel and the Chief Facilities Management Officer, Office of Facilities Management.

(e) When legal assistance is requested by any Central Office contracting activity, the contracting officer will brief the General Counsel regarding the facts and points of issue to facilitate prompt resolution.

(f) With regard to solicitations and contracts awarded and administered by the Central Office contracting activities, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting

of correspondence involving controversial or sensitive contractual matters of a significant nature.

(g) All protests against award will be reviewed by General Counsel in accordance with the provisions specified in 48 CFR 833.103.

(h) Excluded from these legal review requirements are:

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by VA as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) Orders or contracts for procurement of leased telecommunications systems, installation of and changes to telephone PBX systems at individual Department of Veterans Affairs locations or orders issued under GSA area-wide contracts with the American Telephone and Telegraph Company and local telephone companies.

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Acquisition and Materiel Management, Acquisition Review Division shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities Management.)

(j) The following apparent low responsive and responsible bids/offers with the respective solicitations will be submitted for the review of the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, prior to award:

(1) Negotiated contract actions in the Office of Facilities Management which exceed \$2 million.

(2) Bids/offers for construction contracts to be awarded by VHA facilities which exceed \$5 million.

(3) Bids/offers for service contracts, including A/E, which exceed \$2 million, and

(4) Bids/offers for supply contracts which exceed \$5 million in total evaluated cost (excluding FSS contracts awarded by VA National Acquisition Center).

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49016, Dec. 29, 1987; 54 FR 31963, Aug. 3, 1989; 55 FR 31391, Aug. 2, 1990; 58 FR 31914, June 7, 1993; 61 FR 11585, Mar. 21, 1996; 68 FR 3468, Jan. 24, 2003]

801.602-71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals. The contracting officer will fully evaluate technical and legal review comments prior to opening bids or proposals. Potential bidders/offers will be advised of changes to the solicitation by amendment and afforded sufficient time for evaluation prior to opening of bids or offers.

(b) *Veterans Health Administration (VHA) Field Facilities, VA National Acquisition Center.* (1) Proposed contracts or agreements specified in 801.602-70(a) (1), (2), (3), (4) (iii) through (v), (5), (6) and (7) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and when applicable, forward them directly to the General Counsel (025).

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M-1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

(3) Proposed interagency agreements specified in 801.602-70(a)(4)(viii) will be forwarded by the approving official to the Deputy Assistant Secretary for Acquisition and Materiel Management, Program Development and Evaluation Division. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and forward them directly to the General Counsel (025).

(4) Proposed facility-level modification specified in 801.607-70(b) will be forwarded by the contracting officer to General Counsel (025), through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division.

(5) Proposed final decisions or settlement agreements specified in 801.602-70(b) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and forward them to the General Counsel (025).

(6) Proposed revisions to contract clauses specified in 801.602-70(c) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management. If concurred in, the Deputy Assistant Secretary for Acquisition and Materiel Management will forward them directly to the General Counsel.

(c) *Veterans Benefits Administration field facilities.* (1) All proposed State reimbursement contracts and Guidance Center and Vocational Rehabilitation contracts which are anticipated to ultimately involve the expenditure of \$100,000 or more, will be forwarded by the contracting officer directly to the Director, Vocational Rehabilitation and Education Service, for review and approval. The Director, Vocational Rehabilitation and Education Service will review the submissions and forward them to the General Counsel.

(2) Any other proposed agreement or contract specified in 801.602-70(a) will be forwarded by the facility Director to the Chief Benefits Director for Field Operations (201) for coordination with Director(s) of the concerned service(s) and submission to the General Counsel.

(3) Any other element of contracting falling within 801.602-70 (b) and (c) will be processed in accordance with paragraph (b)(2) of this section.

(d) *Central office.* Any element of contracting prescribed for legal review in 801.602-70 originating in central office, will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. (Except that in the case of Office of Facilities Management contracts, a selected sample of contracts will be processed through the Office of Acquisition and

Materiel Management, Acquisition Review Division. All other Office of Facilities Management contract actions identified in 801.602-70 will be submitted for legal review in accordance with Office of Facilities Management procedures).

(e) All bids/offers required to be reviewed prior to award in accordance with 801.602-70(j), will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, with a cover letter identifying:

(1) The date in which the award is anticipated;

(2) Responsibility determination results or efforts ongoing;

(3) Determinations of price reasonableness;

(4) Explanation of proposed award to other than low responsible bidder/offeror.

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 31963, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 61 FR 11585, Mar. 21, 1996; 68 FR 3468, Jan. 24, 2003]

801.602-72 Documents to be submitted for legal review.

The following documents are to be submitted for legal review:

(a) For proposed construction contracts, one copy of all solicitation documents, excluding drawings. These documents will be submitted no later than at the time they are furnished to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are furnished to prospective bidders.

(b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M-1, Part 1, Chapter 34.

(c) For all other proposed contracts and agreements, a copy of the documents to be used in the solicitation and/or award of contract, including any other documents which support the proposed procurement action, e.g., justification and approval in the case of noncompetitive procurement. Solicitation documents will be submitted no later than at the time they are mailed

to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are mailed to prospective bidders.

(d) For contract modifications described in 801.602-70(b) and 801.602-71(b)(4) and (d):

(1) A draft of the proposed modification. This shall be prepared on an SF (Standard Form) 30, Amendment of Solicitation/Modification of Contract, and shall specify the exact language to be used. Changes in work, time and cost must be specifically described;

(2) A statement describing the need for the changed work. This should also be accompanied by any backup documentation, including a copy of the general statement of work in the original contract plus any existing contract language which will be modified. Include a statement that the work covered by the proposed modification is or is not within the original scope of the contract, setting forth fully the facts considered in reaching the conclusion;

(3) A statement containing an analysis on what necessitated the modification, e.g., design error, technical change, medical center requirements;

(4) The contracting officer's technical representative (COTR) technical evaluation of the proposed change;

(5) For construction modifications and, where applicable for architect-engineer (A/E) modifications, a copy of drawings which the COTR has marked up to delineate the proposed changed work. If appropriate, include a copy of the pertinent technical specifications. Whenever a proposed contract modification involves numerous changes to drawings and specifications for a Central Office project, the drawings and specifications will be available for review in the office of the Project Director;

(6) Costing information including:

(i) The contractor's cost proposal in the format required by the contract.

(ii) The COTR's independent cost evaluation.

(iii) The A/E's independent cost evaluation.

(iv) Contracting officer's Price Negotiation Memorandum (PNM) in accordance with VAAR 815.808. For Office of Facilities Management contracts, the

PNM may be submitted by either the contracting officer or COTR.

(v) For A/E contracts, a listing of the fees awarded in the original contract and previous modifications.

(vi) For A/E working drawing contracts, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(vii) Any other relevant costing information, such as independent market research, which was or will be used as negotiation criteria.

(7) A concurrence on the memorandum from the appropriate office indicating that funds are available or a statement concerning the actions which must be taken to secure the required funds; and

(8) The names and telephone numbers of the contracting officer and COTR.

(e) For bids/offers submitted as required by 801.602-70(j), the following documents will be provided:

(1) Request for contract action, including justification of need.

(2) The solicitation.

(3) Abstracts of bids/offers.

(4) Price negotiations memorandum, if applicable.

(5) Justification and approval (see FAR 6.303), if applicable.

(6) Documents relevant to determination of contractor's responsibility.

(7) Documents relevant to price reasonableness.

[49 FR 12583, Mar. 29, 1984, as amended at 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996; 61 FR 20491, May 7, 1996; 68 FR 3468, Jan. 24, 2003]

801.602-73 Certification by reviewing official.

In submitting proposed agreements or contracts received from field stations to the General Counsel, the Central Office reviewing officials will state on the transmittal memorandum or within the file that the proposal conforms to the Federal Acquisition Regulations and Department of Veterans Affairs Acquisition Regulations to the best of their knowledge.

[49 FR 12583, Mar. 29, 1984, as amended at 61 FR 11586, Mar. 21, 1996]

801.602-74 Results of General Counsel's legal review.

(a) Upon completion of the review, the General Counsel will advise the appropriate Central Office activity or contracting officers as to whether the proposal was approved as submitted or provide them with the recommended changes. The appropriate Central Office activity will advise the contracting officer as to whether: (1) The submission was approved as is, or (2) provide a copy of the changes required. Where changes are required, the contracting officer will take immediate action to amend the solicitation document.

(b) The General Counsel's review will be completed as expeditiously as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing procurement action.

801.603 Selection, appointment, and termination of appointment.**801.603-1 General.**

The policy and procedures for the selection, appointment, and termination of appointment of contracting officers are established in VAAR 801.690, The Contracting Officer Certification Program, and as otherwise provided in VAAR 801.670 and its subsections.

[52 FR 24010, June 26, 1987]

801.603-70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602-2, the contracting officer may designate another Government contracting officer, or other Government employees, or another contractor:

(1) To furnish technical guidance and advice or generally supervise the work performed under the contract. Such designations will be in writing and will define the scope and limitation of the representative's authority; and, will be addressed to the designee with a copy to be forwarded to the contractor except as indicated in 801.603-71. Except as provided in paragraph (c) of this section representatives will not be authorized to make any commitments or changes which will affect the price, quantity, quality or delivery terms.

(All changes to a contract must be authorized by a contracting officer acting within the scope of his/her authority.)

(2) To take actions authorized in the contract, such as issue delivery orders, reject unsatisfactory items, order replacement of such items (materials or services) and, when necessary, declare contractor in default on specific delivery orders. Except for blood, this authority will be delegated only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state. Centralized contracts for blood will provide that contracting officers at ordering offices are authorized to designate representatives and alternate representatives to place delivery orders subject to the same restrictions stated in paragraph (a)(3) of this section.

(3) To place oral or other informal delivery orders for items such as, but not limited to, bread, milk, and blood against local indefinite delivery type contracts on which blanket purchase arrangements have been established and funds have been obligated. The designation of representatives and alternates will be in writing and will define the scope and limitations of the representative's authority, and will be addressed to the employee(s) with a copy to the contractor. Such designations will be made only by the prime contracting officer and are not redelegable.

(b) In the administration of research and development contracts, any representative appointed pursuant to this section must be acceptable both to the contracting officer and the administration head or staff office director concerned. When it is necessary to designate a representative under this paragraph (b), the clause in 852.270-1 will be observed.

[49 FR 12583, Mar. 29, 1984, as amended at 52 FR 24010, June 26, 1987; 54 FR 40062, Sept. 29, 1989]

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

(a) Except as provided in paragraphs (b), (c) and (d) of this section, any contracting officer may, without prior notification to the contractor or vendor,

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designate the Chief, Storage and Distribution Section, or other competent personnel, to represent him/her in receiving and inspecting supplies, equipment and services at his/her facility. Duties such as, but not limited to, the following will be performed by these designees:

(1) The inspection and certification as to compliance with the quality and quantity requirements of the purchase order or contract; and

(2) Inspection of supplies and equipment for condition and quantity and the acceptance of supplies, equipment, and services, based on quality inspection made by other authorized representatives.

(b) The Director, Library Services, VA Central Office, and the Chief, Library Service, at a field facility, are designated the representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made direct to the library.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996; 63 FR 69217, Dec. 16, 1998]

801.670 Special and limited delegation.

The authority vested in the Secretary to execute, award and administer contracts, purchase orders and other agreements for the expenditure of funds involved in the acquisition of the specific services set forth in this 801.670 and its subsections, is hereby delegated to the Senior Procurement Executive for further delegation to those employees appointed or designated to the positions specified in these subsections.

[49 FR 12583, Mar. 29, 1984, as amended at 54 FR 31964, Aug. 3, 1989]

801.670-1 Issue of Government bills of lading—transportation of remains of deceased beneficiaries.

The Chief, Medical Administration Service (MAS), or the person designated by the medical center director to perform MAS functions, at a Department of Veterans Affairs medical center, is delegated authority to issue and to sign as "Issuing Officer," Government bills of lading for the shipment of

the remains of beneficiaries expiring in a Department of Veterans Affairs medical center.

[49 FR 12583, Mar. 29, 1984. Redesignated at 52 FR 24010, June 26, 1987, as amended at 63 FR 69217, Dec. 16, 1998]

801.670-2 Issue of Government bills of lading—transportation of property.

(a) Authority to issue and sign Government bills of lading for the transportation of supplies, material, and equipment is delegated to the following:

(1) Chief, Warehouse Section, VA Forms and Publications Depot.

(2) Traffic Manager, Office of Acquisition and Materiel Management, Central Office.

(b) The employees named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer; and, authority is hereby delegated to such subordinates to issue and sign Government bills of lading for the transportation of supplies, material, and equipment. Designations will be in writing and specifically set forth the scope and limitation of the designee's authority.

[49 FR 12583, Mar. 29, 1984. Redesignated at 52 FR 24010, June 26, 1987, and amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 63 FR 69217, Dec. 16, 1998]

801.670-3 Medical, dental, and ancillary service.

(a) The Chief of Staff, the physician assigned the responsibility for the ambulatory care function, and Chief, Medical Administration Service (MAS), or the person designated by the medical center director to perform MAS functions, at a Department of Veterans Affairs facility are delegated authority to execute authorizations for medical, dental, and ancillary services under \$10,000 per authorization when such services are not available from existing contracts or agreements. Forms specified in part 853 of this chapter will be used for this purpose and when ordering such services from existing contracts.

(b) The contracting officers named in paragraph (a) of this section may designate one or more of their subordinates to execute the forms for purposes stated in paragraph (a) of this section.

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Designations will be in writing and will specifically set forth the scope and limitations of the designee's authority.

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985. Redesignated at 52 FR 24010, June 26, 1987, and amended at 54 FR 31964, Aug. 3, 1989; 63 FR 69217, Dec. 16, 1998]

801.670-4 National Cemetery System.

Authority for the National Cemetery System to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) Authority to issue and sign Government bills of lading for the transportation of headstones and markers is further delegated to:

(1) Chief, Centralized Contracting Division, Office of Operations Support.

(2) Freight Rate Specialist, Office of Operations Support.

(b) Authority to procure, in emergency situations when the servicing supply organization cannot be utilized, and in accordance with the provisions of FAR Part 13, supplies, equipment, and nonpersonal services (including construction) required for the operation of national cemeteries is delegated to:

(1) Director, National Cemetery System, and Director, Office of Field Operations, National Cemetery System.

(2) Director, National Cemetery Area Office.

(c) Authority to procure items and nonpersonal services up to \$300 per transaction for the operation of national cemeteries is delegated to the Director of each national cemetery. The authority is to be used only in emergency situations when the servicing supply organization cannot be utilized, and the method of purchase is limited to the use of SF 44, Purchase Order—Invoice—Voucher, (FAR 13.306).

[49 FR 12583, Mar. 29, 1984. Redesignated and amended at 52 FR 24010, June 26, 1987; 54 FR 31964, Aug. 3, 1989; 63 FR 69217, Dec. 16, 1998]

801.670-5 Letters of agreement.

(a) Authority to execute, award, and administer letters of agreement (subject to the limitation prescribed in 837.2) is delegated to the following:

(1) General Counsel.

(2) Deputy Assistant Secretary for Human Resources Management.

(3) Under Secretary for Health.

(4) Under Secretary for Benefits.

(5) Under Secretary for Memorial Affairs.

(6) Deputy Assistant Secretary for Acquisition and Materiel Management

(7) Inspector General.

(8) Directors, Regional Medical Education Centers (limited to obtaining instructors and training pursuant to section 7471 of Title 38, United States Code).

(9) Directors, Domiciliary and Medical Centers and Research and Development Service Directors authorized to sign for the Chief Research and Development Officer (limited to obtaining peer review of research (see 837.2)).

(b) The contracting officers named in paragraphs (a) (1) through (7) of this section may designate one or more subordinates, and authority to execute letters of agreement is hereby delegated to such subordinates. Such subordinates will be no more than one organizational level below the contracting officers designated in paragraph (a) of this section, except that the Under Secretary for Health may designate the Veterans Integrated Service Network Directors. All such designations will be in writing, will specifically state the scope and limitations of the designees' contractual authority, and will also specifically prohibit further delegation by the designees. Copies of the delegation will be submitted to the Office of Acquisition and Materiel Management, Acquisition Administration Team.

(c) Copies of all letters of agreement issued by the designees identified in paragraphs (a) and (b) of this section will be forwarded to the servicing contracting activity in order that the procurement action may be entered into the Federal Procurement Data System.

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985. Redesignated at 52 FR 24010, June 26, 1987, and further amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996; 63 FR 69218, Dec. 16, 1998]

801.680 Contracting authority of the Inspector General.

(a) As provided by section 6(a) of Pub. L. 95-452 (October 12, 1978), the Inspector General is authorized to enter into contracts and other arrangements for audits, studies, analyses, and other

services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the Act, to the extent and in such amounts as may be provided in advance by appropriations Acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may request the assistance of the servicing Acquisition and Materiel Management Service in developing appropriate contract or agreement documents.

(c) If, in the opinion of the Inspector General, a reason to exercise the special authority does not exist, the services required by the Inspector General shall be obtained by the servicing Acquisition and Materiel Management Service or the local purchase and contract activity in accordance with the provisions of FAR and VAAR.

(d) Contracts entered into under the authority of paragraph (a) of this section are subject to the provisions of the Federal Acquisition Regulation. In addition, such contracts are subject to those provisions of VAAR which implement and supplement the FAR on matters other than those stemming from or related to delegations of the Secretary's contracting authority (e.g., management controls and approvals specified in subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General).

[49 FR 12583, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 31964, Aug. 3, 1989; 61 FR 11586, Mar. 21, 1996; 63 FR 69218, Dec. 16, 1998]

801.690 VA Contracting Officer Certification Program.

The policy and procedures for the VA-wide Contracting Officer Certification Program (COCP) are established in this section and subsections.

[52 FR 24010, June 26, 1987]

801.690-1 Definitions.

(a) *Head of the Contracting Activity (HCA)* means an individual who has overall responsibility for managing the procurement program assigned to the activity. HCA designations are prescribed in VAAR 802.100. The HCA has the authority to appoint contracting officers with authority to conduct pro-

urements of up to and including \$25,000 or the maximum order limitation for orders placed against established contracts, and terminate such appointments.

(b) *Recommending official* means an individual who is authorized by VAAR 801.690 and its subsections to recommend to a designating official that an individual be appointed as a contracting officer.

(c) *Designating official* means an individual who is authorized to appoint and terminate contracting officers.

(d) *Contracting Officer Certification Board (COCB)* means the group of Department officials, listed in VAAR 801.690-3(c), that evaluates and recommends to the designating official individuals as contracting officers at the Intermediate and Senior levels of authority, which levels are described in VAAR 801.690-2(c).

(e) *Contracting Officer Certification Program (COCP)* means a program designated by Department management for the selection, appointment, and termination of appointment of contracting officers. Training, experience, education, performance, and conduct are the objective criteria reviewed prior to appointment as contracting officer.

(f) *Qualifications* means an employee's record of training, experience, education, performance, and conduct which are reviewed prior to designation as contracting officer. These "qualifications" are not identical, supplemental, or related to the position qualification requirements published by the Office of Personnel Management in Handbook X-118.

(g) *Appointment* means the delegation of authority to any employee to enter into, administer or terminate contracts, and make related determinations and findings. Appointment provisions are identified in 801.690-5.

(h) *Certification* means an evaluation that the candidate has the experience, education and training to perform properly the duties of a contracting officer.

(i) *Selection* means that an employee has been appointed or certified as a contracting officer. The "selection" process is not identical, supplemental or related to any process whereby an

employee is placed into a position by any competitive action (merit promotion) or noncompetitive action (reassignment, reinstatement). Selection provisions are identified in 801.690-4.

(j) *Termination* means the revocation of contracting authority of a contracting officer by the designating official. Termination provisions are identified in 801.690-6.

(k) *Acquisition Training Program (ATP)* means a program designed to provide contracting officers with classroom knowledge to further develop their acquisition skills.

[52 FR 24010, June 26, 1987, as amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989]

801.690-2 General.

(a) The VA COCP applies to all programs of the Department of Veterans Affairs except for those contracting officers appointed pursuant to the Inspector General Act (Pub. L. 95-452).

(b) A certification of appointment is not required for contracting officers designated in 801.670 who exercise special and limited delegations of authority.

(c) The COCP is based on three levels of authority:

(1) *Basic*. Expenditures up to and including \$25,000 or the maximum order limitation for orders placed against established contracts.

(2) *Intermediate*. Expenditures up to and including \$100,000 for negotiation and \$1,000,000 for sealed bids.

(3) *Senior*. Unlimited.

[52 FR 24011, June 26, 1987, as amended at 54 FR 31964, Aug. 3, 1989]

801.690-3 Responsibility for administration of Contracting Officer Certification Program (COCP).

(a) *The Deputy Assistant Secretary for Acquisition and Materiel Management (A&MM)*. The Deputy Assistant Secretary for A&MM is responsible for:

(1) Administering the COCP to ensure that the certification board evaluates, recommends acceptance, rejection, or termination of applicants at the Senior and Intermediate Levels according to the requirements of the COCP.

(2) Developing additional training and the level of certification as required by the COCP.

(3) Serving as the designating official, and in that capacity appoints or terminates contracting officers at the Senior and Intermediate Levels of authority.

(b) *Heads of contracting activities (HCA)*. The HCA is responsible for:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services assigned to the activity.

(2) Establishing adequate controls to ensure compliance with applicable laws and regulations.

(3) Appointing or terminating appointments of contracting officers at the Basic Level within their activity. Each HCA will establish procedures for the appointment or termination of appointment of contracting officers at the Basic Level to include maintenance of records on individual training and experience, as well as appointment and termination actions.

(4) Recommending to the designating official the appointment or termination of appointment of contracting officers at the Intermediate and Senior Levels of authority based on candidate qualifications, as well as a valid organizational need.

(c) *Contracting Officer Certification Board (COCB)*. The COCB may receive, evaluate, and recommend to the designating official, candidates for contracting officer positions at the Intermediate and Senior Levels. The board will be chaired by the Associate Deputy Assistant Secretary for Acquisitions, OA&MM, and membership will consist of:

(1) Chief Administrative Officer (VHA) (or designee),

(2) Deputy Facilities Management Officer (or designee),

(3) Acquisition Training Officer, and

(4) Additional members to be selected on an ad hoc basis depending on the organizational need for certified contracting officers.

(d) *Acquisition Training Officer (ATO)*. The ATO in the OA&MM will serve as the Executive Secretary to the COCB. The ATO will coordinate all requests for certification with the COCB. Upon the decision by the Deputy Assistant Secretary for A&MM, the ATO will respond to the HCA with a copy of the

appropriate action. In addition, the ATO will maintain records on the development and administration of the Contracting Officer Certification Program (COCP) as well as the records on individual training, certification and termination actions at the Intermediate and Senior Contracting Officer Level. The ATO will identify all records created and maintained and ensure they are scheduled for disposal by the Office of Acquisition and Materiel Management Records Officer.

[52 FR 24011, June 26, 1987, as amended at 54 FR 31964, Aug. 3, 1989; 54 FR 40062, Sept. 29, 1989; 63 FR 69218, Dec. 16, 1998]

801.690-4 Selection.

(a) Contracting officers (CO) shall be appointed only in those instances where a valid organizational need for certified personnel can be demonstrated. Such factors to be considered in making these assessments include complexity of work, volume of actions and organizational structure.

(b) Requests for appointment of contracting officers will be made in writing. Request for appointments at the Senior and Intermediate Level will be signed by the HCA and forwarded to the Acquisition Training Officer (90) for processing. The request for appointment will include at a minimum a justification of need, and a qualification statement for the candidate. Requests for appointment of HCAs as contracting officers will be made at one level above the head of the contracting activity.

(c) The COCB and HCAs (limited to Basic Level) will evaluate candidates for CO certifications based on training, experience, and performance, and consideration of academic education, in addition to meeting standards of ethical conduct and avoiding conflicts of interest. Minimum qualifications of contracting officers are based on a combination of training, experience, and performance with consideration of relevant academic credit or degrees earned. The following minimum requirements are established for designation of contracting officers:

(1) *Basic level.* (i) *Training*—Forty hours of basic acquisition or small purchase training that can be accomplished on the job or in formalized

courses of instruction. If on-the-job training is conducted, it must be documented for the record and include a brief description of the duties and responsibilities that comprised that training.

(ii) *Experience.* Three years of progressive assignments in an acquisition related field within the last five years and demonstrated broad technical ability related to acquisition.

(iii) *Performance*—Satisfactory rating.

(iv) *Education (desired)*—High school diploma.

(2) *Intermediate level*—(i) *Training*—(A) *ATP Level I*—Basic Acquisition.

(B) *ATP Level II*—Advanced Contract Administration.

(C) *ATP Level III*—Cost and Price Analysis.

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

(ii) *Experience.* Two years of progressive work assignments in an acquisition related field leading to broader technical ability within the last five years.

(iii) *Performance.* Satisfactory rating.

(iv) *Education (desired).* Associate degree.

(3) *Senior level*—(i) *Training*—(A) *ATP Level I*—Fundamentals of Acquisition.

(B) *ATP Level II*—Advanced Contract Administration.

(C) *ATP Level III*—Cost and Price Analysis.

(D) *ATP Level IV*—Contract Negotiation.

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

(ii) *Experience.* Three years of progressive assignments in an acquisition related field within the last five years and demonstrated broad technical ability related to acquisition.

(iii) *Performance.* Satisfactory rating.

(iv) *Education (desired).* Bachelor degree.

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(d) Other training courses may be substituted for the prescribed core curriculum provided that the training meets equivalent content and difficulty per course. Recommending officials must fully document and justify equivalent courses when recommending candidates for appointment as contracting officers. The COCB will review and determine if equivalent courses may be appropriately substituted. HCAs are responsible for providing their subordinates with advice and assistance necessary to complete required training.

(e) Candidates who achieve additional academic credit beyond the desired education level may be eligible to receive credit toward experience for this additional academic credit. Substitutions of this nature must be fully justified and documented by the recommending official and forwarded to the COCB for evaluation and appropriate action. Candidates will receive a maximum credit of 1 year of experience when substitutions are approved for the Intermediate and Senior Level. A maximum credit of 6 months may be approved by the HCA for the Basic Level.

(f) Candidates who do not meet the minimum qualifications established in this section, may be granted interim appointments in accordance with 801.690-7.

(g) The Privacy Act of 1974 applies to the information collected during the selection and appointment of contracting officers.

[52 FR 24011, June 26, 1987, as amended at 54 FR 31965, Aug. 3, 1989; 63 FR 69218, Dec. 16, 1998]

801.690-5 Appointment.

(a) The recommending official may recommend candidates for appointment as contracting officers to the designating official. Only the Deputy Assistant Secretary for A&MM or the HCA is authorized to sign the Standard Form 1402, Certification of Appointment.

(b) Specific limitations imposed upon the authority of contracting officer shall be set forth in certificates of appointment or otherwise conveyed in writing to appoint contracting officers.

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(c) Appointment of COs at specific levels does not preclude imposition of administrative reviews, approvals, or other limitations for program management purposes.

[52 FR 24012, June 26, 1987, as amended at 54 FR 31965, Aug. 3, 1989]

801.690-6 Termination.

(a) The designating official may revoke the appointment of a contracting officer at any time after evaluation of written recommendations by an HCA or other management officials based on:

(1) The fact that the need for the appointment no longer exists;

(2) Personnel actions such as resignation or retirement;

(3) Cause. (Cause covers such areas as, e.g., unsatisfactory performance, official misconduct pending criminal or administrative investigations, failure to meet training requirements.)

(b) Situations involving termination of contracting authority of contracting officers for cause should be discussed with the servicing Human Resources Service to determine impact, if any, on the employee's continued employment.

[54 FR 31965, Aug. 3, 1989, as amended at 63 FR 69218, Dec. 16, 1998]

801.690-7 Interim appointment provisions.

(a) Individuals who do not meet all minimum qualifications as described in 801.690-4, may be appointed on an interim basis to ensure availability of procurement support. Requests to the designating official for interim appointments shall include information on the candidate's training, experience, performance, education, and justification for the interim appointment. All minimum training requirements shall be scheduled for individuals issued interim appointments and completed within a reasonable period of time. At least two required courses or equivalents will normally be completed each year after the date of appointment. Failure to complete minimum training requirements within the time frame may result in the loss of the interim appointment.

(b) If training requirements are met during the interim appointment period

through the ATP, a permanent warrant may be issued by the designating official upon satisfactory completion of all the required courses. Where equivalent courses have been completed, appropriate documentation (copies of course certificates) must be submitted before a permanent warrant can be issued.

(c) Instances that may require the use of interim appointments may include, but are not limited to the following:

- (1) Organization changes;
 - (2) Sudden extreme increases in the number of procurement requests; and
 - (3) New hires or promotions into GS-1102 series.
- (d) Interim appointments shall normally not exceed a 2 year period.

[52 FR 24012, June 26, 1987, as amended at 54 FR 31965, Aug. 3, 1989]

801.690-8 Distribution of SF 1402, Certificate of Appointment

(a) The original SF 1402, Certificate of Appointment, shall be provided to the appointed contracting officer and displayed at the contracting officer's duty station.

(b) A copy of the certificate will be filed in the delegation of authority file and another copy will be furnished to the fiscal activity.

(c) Each certificate will be serially numbered.

[54 FR 31965, Aug. 3, 1989]

801.690-9 Post appointment maintenance of certifications. [Reserved]

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1—Definitions

802.100 Definitions

(a) In VA, *head of the contracting activity* means the Director, Acquisition Management Service, Central Office; Deputy Assistant Secretary for Facilities, Central Office; Director, Building and Supply Service, Central Office; Director, Publications Service, Central Office; Director, Monument Service, Central Office; Director, Vocational Rehabilitation and Education Service, Central Office; Director, Loan Guaranty Service, Central Office; Director,

VA Marketing Center; Chief, Supply Service, at a field facility; and the Director, Regional Office.

(b) Procurement Executive means the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) Senior Procurement Executive means the Assistant Secretary for Management (004). The Senior Procurement Executive is responsible for the management direction of the VA acquisition systems.

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

[52 FR 24013, June 26, 1987, as amended at 52 FR 28559, July 31, 1987; 54 FR 40062, Sept. 29, 1989; 61 FR 1527, Jan. 22, 1996]

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 803.1—Safeguards

- Sec.
- 803.101 Standards of conduct.
- 803.101-3 Department regulations.

Subpart 803.2—Contractor Gratuities to Government Personnel

- 803.203 Reporting suspected violations of the Gratuities Clause.

Subpart 803.3—Reports of Suspected Antitrust Violations

- 803.303 Reporting suspected antitrust violations.

Subpart 803.4—Contingent Fees

- 803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 803.5—Other Improper Business Practices

- 803.502 Subcontractor kickbacks.

Subpart 803.70—Contractor Responsibility To Avoid Improper Business Practices

- 803.7000 Policy.
- 803.7001 Display of VA hotline poster.
- 803.7002 Contract clause.

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

SOURCE: 49 FR 12592, Mar. 29, 1984, unless otherwise noted.

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

(a) Standards of conduct for all VA employees, including contracting officials, are found in 38 CFR part 0.

(b) Requirements for employee financial disclosure are contained in 38 CFR part 0, subpart B. Generally contracting officers and all supervisory contracting officials must file financial disclosure statements.

[49 FR 12592, Mar. 29, 1984, as amended at 61 FR 20491, May 7, 1996; 63 FR 69218, Dec. 16, 1998; 64 FR 30442, June 8, 1999]

Subpart 803.2—Contractor Gratuities to Government Personnel**803.203 Reporting suspected violations of the Gratuities Clause.**

(a) Suspected violations of the Gratuities Clause will be reported to the head of the contracting activity through the contracting officer. The head of the contracting activity will confirm that violations are evident and that reporting these violations to officials designated in paragraph (b) would be warranted.

(b) When violations of the Gratuities Clause warrant actions described in FAR 3.204(c) the head of the contracting activity will request instructions from the VA General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Materiel Management.

[49 FR 12592, Mar. 29, 1984, as amended at 61 FR 1527, Jan. 22, 1996]

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

Instances of possible antitrust violations will be reported by procurement activities in accordance with FAR 3.303 to the Deputy Assistant Secretary for Acquisition and Materiel Management for review and submission to the General Counsel, who will determine

whether or not to submit the case to the Attorney General.

[49 FR 12592, Mar. 29, 1984, as amended at 61 FR 1527, Jan. 22, 1996]

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

Before taking any administrative action the heads of the contracting activity shall consult with their respective VA District Counsels. Contracting officers in Central Office shall consult with the Office of the General Counsel.

[49 FR 12592, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 61 FR 20491, May 7, 1996. Redesignated at 63 FR 69218, Dec. 16, 1998]

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

Suspected violations of the Antikickback Act will be reported to the Office of the General Counsel.

Subpart 803.70—Contractor Responsibility To Avoid Improper Business Practices

SOURCE: 57 FR 58718, Dec. 11, 1992, unless otherwise noted.

803.7000 Policy.

It is Department of Veterans Affairs' (VA) policy to contract with companies that conduct business with the highest degree of integrity and honesty. To demonstrate this commitment to integrity and honesty, contractors should have standards of conduct and internal control systems that are designed to promote such standards, to facilitate the timely discovery and disclosure of improper conduct in connection with Government contracts, and to assure that corrective measures are promptly instituted and carried out. For example, a contractor's system of management controls should provide for—

(a) A written code of business ethics and standards of conduct and an ethics training program for all employees;

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(b) 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;

(c) Disciplinary action for improper conduct;

(d) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(e) Internal and/or external audits as appropriate;

(f) Timely reporting to appropriate Government officials of any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

[57 FR 58718, Dec. 11, 1992, as amended at 63 FR 69218, Dec. 16, 1998]

803.7001 Display of VA hotline poster.

Contractors who are awarded a VA contract of—

(a) \$500,000 or more for supplies or services, or

(b) \$3 million or more for construction, and who have not established an internal reporting mechanism and program, as described in 803.7000(b), shall be required to display prominently in common work areas within business

segments performing work under VA contracts, the VA hotline poster prepared by the VA Office of Inspector General.

803.7002 Contract clause.

The contracting officer shall insert the clause at 852.203-71, Display of VA hotline poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7001.

PART 804—ADMINISTRATIVE MATTERS

Subpart 804.1—Contract Execution

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

804.101 Contracting officer's signature.

In the event a contracting officer's name and title has been typed, stamped or printed on the contract and the contracting officer is not available to sign the contract, a designee may sign for the contracting officer. Such designee must be a contracting officer as specified in 801.602 and must have specific contracting authority to cover the contract to be signed.

[49 FR 12592, Mar. 29, 1984, as amended at 61 FR 20492, May 7, 1996]

SUBCHAPTER B—ACQUISITION PLANNING

PART 805—PUBLICIZING CONTRACT ACTIONS

Subpart 805.2—Synopsis of Proposed Contracts

Sec.

805.202 Exceptions.

805.205 Special situations.

805.207 Preparation and transmittal of syn-
opses.

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

Subpart 805.2—Synopsis of Proposed Contracts

805.202 Exceptions.

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

[51 FR 23066, June 25, 1986 and 52 FR 28559, July 31, 1987; 61 FR 20492, May 7, 1996]

805.205 Special situations.

Contracting officers are hereby delegated authority to procure paid advertising in a daily newspaper circulated in the local area, for the purpose of publicizing a proposed procurement of architect-engineer services expected not to exceed \$10,000.

[49 FR 12592, Mar. 29, 1984, as amended at 63 FR 69218, Dec. 16, 1998]

805.207 Preparation and transmittal of synopses.

At such time as an architect-engineer evaluation board is ready to advertise for architect-engineer services, it must establish the geographic area within which architect-engineer firms (including joint ventures) will be considered. The area determined must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

[49 FR 12592, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23066, June 25, 1986; 52 FR 28559, July 31, 1987; 54 FR 40063, Sept. 29, 1989; 61 FR 20492, May 7, 1996]

PART 806—COMPETITION REQUIREMENTS

Subpart 806.3—Other Than Full and Open Competition

Sec.

806.302-3 Industrial mobilization; or experi-
mental, development, or research work.

806.302-5 Authorized or required by statute.

806.302-7 Public interest.

806.304 Approval of the justification.

Subpart 806.4—Sealed Bidding and Competitive Proposals

806.401 Sealed bidding and competitive pro-
posals.

Subpart 806.5—Competition Advocates

806.501 Requirement.

806.502 Duties and responsibilities.

806.570 Planning requirements.

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

SOURCE: 51 FR 23066, June 25, 1986, unless
otherwise noted.

Subpart 806.3—Other Than Full and Open Competition

806.302-3 Industrial mobilization; or experimental, development, or re- search work.

Research authorized to be conducted by the Department of Veterans Affairs in accordance with the provisions of title 38, U.S. Code, will be negotiated under the authority of 41 U.S.C. 253(c)(3) (except prosthetics research authorized by 38 U.S.C. 7303 will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount). Such acquisitions require justifications and approvals required by FAR 6.303 and 48 CFR 806.304.

[51 FR 23066, June 25, 1986, as amended at 61 FR 20492, May 7, 1996; 63 FR 69218, Dec. 16, 1998]

806.302-5 Authorized or required by statute.

(a) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409 are approved for other than full and open competition *only*

when such contracts are with institutions affiliated with the Department of Veterans Affairs pursuant to 38 U.S.C. 7302. The justification and approval requirements of FAR 6.303 and 806.304 are still applicable.

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151-8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151-8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

(d) Various other sections of Title 38, United States Code, authorize the Secretary to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. The justification and approval requirements specified in FAR 6.303 and 806.304 are still applicable. VA contracting officers entering into contracts using other than competitive procedures for any of the following items or services, estimated to cost in excess of the sim-

plified acquisition threshold, will cite, in addition to 41 U.S.C. 253(c)(5), the appropriate section of Title 38, United States Code, as their authority to do so.

(1) Contracts for orthopedic and prosthetic appliances and related services including research. 38 U.S.C. 8123.

(2) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. 38 U.S.C. 7802.

(3) Contracts or leases for the operation of parking facilities established under the authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee. 38 U.S.C. 8109(f).

(4) Contracts for laundry and other common services such as the purchase of steam, may be noncompetitively negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources. 38 U.S.C. 8122(c).

(5) Contracts or agreements with public or private agencies for services or translators. 38 U.S.C. 513.

(6) Contracts for nursing home care. 38 U.S.C. 1720.

[51 FR 23066, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 54 FR 40063, Sept. 29, 1989; 61 FR 20492, May 7, 1996; 63 FR 69218, Dec. 16, 1998; 68 FR 3468, Jan. 24, 2003]

806.302-7 Public interest.

Use of 41 U.S.C. 253(c)(7) to support contract award using other than full and open competition will require a D&F prepared in accordance with FAR subpart 1.7 and VAAR subpart 801.7 and signed by the Secretary. The D&F will be prepared by the contracting officer and submitted by the head of contracting activity (Subpart 802.1) to the Agency Competition Advocate (806.501). The submission will include:

(a) The date of expected contract award (*Note: Congress must be notified 30 days prior to award*), and

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(b) A justification prepared by the contracting officer in accordance with FAR 6.303.

[51 FR 23066, June 25, 1986, as amended at 61 FR 20492, May 7, 1996]

806.304 Approval of the justification.

(a) Approvals of justifications as specified in FAR 6.304, prepared in accordance with FAR 6.303, will be approved as follows:

(1) For a proposed contract not exceeding \$100,000, one contracting level above the contracting officer (see Subpart 801.6). However, if the contracting officer is also the head of the contracting activity approval will be made by:

(i) The medical center director for acquisitions at Veterans Health Administration (VHA) medical facilities, or

(ii) The Agency Competition Advocate (806.501(a)) in all other cases.

(2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the Contracting Activity Competition Advocate (806.501(b)). However, if the Contracting Activity Competition Advocate is also the contracting officer, approval will be made by:

(i) The medical center director for acquisitions at VHA medical facilities, or

(ii) The Agency Competition Advocate in all other cases.

(3) For a proposed contract over \$1,000,000 but not exceeding \$10,000,000 by the Agency Competition Advocate (806.501(a)).

(4) For a proposed contract over \$10,000,000 by the Senior Procurement Executive (See 802.100).

(b) Class justifications as specified in FAR 6.304(c), will be approved by the Agency Competition Advocate regardless of dollar amount.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989; 61 FR 20492, May 7, 1996; 63 FR 69218, Dec. 16, 1998]

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Subpart 806.4—Sealed Bidding and Competitive Proposals

806.401 Sealed bidding and competitive proposals.

Contracting officers shall solicit sealed bids if the contract is expected to exceed the small purchase limitation or expected to exceed \$1,000 for contracts made for repairs to property acquired by VA under 38 U.S.C. Chapter 37 and the criteria in FAR 6.401(a) are met. The contract file shall include any findings by the contracting officer that sealed bidding is not appropriate.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 806.5—Competition Advocates

806.501 Requirement.

(a) The Associated Deputy Assistant Secretary for Acquisitions (90A) is designated as the Agency Competition Advocate.

(b) The Executive Director and Chief Operating Officers, VA National Acquisition Center, or designee, will serve as the Competition Advocate for the Center. Each head of the contracting activity (see Subpart 802.1) or designee will serve as the Contracting Activity Competition Advocate in all other cases.

[51 FR 23066, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989; 61 FR 1527, Jan. 22, 1996; 63 FR 69218, Dec. 16, 1998]

806.502 Duties and responsibilities.

In addition to the responsibilities identified in FAR 6.502(a), the Agency Competition Advocate will coordinate the competition advocacy program as it is implemented at all VA contracting activities. The Agency Competition Advocate will:

(a) Establish program guidelines to be used by contracting activity competition advocates;

(b) Assist contracting activity competition advocates with obstacles to promoting competition;

(c) Utilize supply technical surveys, other facility reports, and the Federal Procurement Data System to monitor

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contracting activity compliance with the advocacy program;

[51 FR 23066, June 25, 1986, as amended at 61 FR 20492, May 7, 1996]

806.570 Planning requirements.

Competition Plan. Each Contracting Activity Competition Advocate shall develop a Competition Plan and incorporate the Plan in the internal operating procedures of the facility or organization in which the contracting activity is located. It is essential that the plan be endorsed and supported by top level management and be clearly understood by the services and offices that the contracting activity support. As a minimum, the plan shall include:

- (a) The approval requirements for other than full and open competition specified in FAR 6.304;
- (b) A description of the synopsis requirements contained in FAR Subpart 5.2 in order that the necessity for Advance Procurement Planning is fully understood;
- (c) A description of how the Competition Plan should be integrated into Advance Procurement Planning;
- (d) Identification of any known obstacles to competition and a proposal for overcoming them;
- (e) A method for otherwise increasing competition for contracts on the basis of cost and other significant factors.

[51 FR 23066, June 25, 1986, as amended at 61 FR 20492, May 7, 1996; 63 FR 69218, Dec. 16, 1998]

PART 807—ACQUISITION PLANNING

Subpart 807.3—Contractor Versus Government Performance

- Sec.
- 807.300 Scope of subpart.
- 807.304 Procedures.
- 807.304-73 Bid opening/receipt of proposals.
- 807.304-75 Bid acceptance.
- 807.304-76 Contract effective date.
- 807.304-77 Right of first refusal.

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

SOURCE: 53 FR 43210, Oct. 26, 1988, unless otherwise noted.

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

This subpart prescribes basic procedures and principles to be followed in performing the contracting aspect of the OMB Circular A-76 cost comparison process.

807.304 Procedures.

807.304-73 Bid opening/receipt of proposals.

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation).

807.304-75 Bid acceptance.

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214-15.

807.304-76 Contract effective date.

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be carefully considered in conjunction with the A-76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advance of bid opening/receipt of proposals as prescribed by Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also

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should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal clause specified in FAR 52.207-3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207-70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

(2) Other government agencies excess.

(3) Federal Prison Industries.

(4) Procurement list of products available from the Committee for Purchase From People Who Are Blind or Severely Disabled.

(5) GSA stock and other Government agency inventory.

(6) VA decentralized contracts.

(7) Mandatory Federal Supply Schedule contracts.

(8) Optional use Federal Supply Schedule contracts.

(9) Commercial concerns, educational, or nonprofit institutions, as applicable.

(b) *Public exigency.* A source lower in priority may be utilized in a public exigency as defined in FAR 6.302-2 and in Federal Property Management Regulation 41 CFR 101-25.101-5. Justification for each deviation must be included in the procurement file.

(c) *Eligible Beneficiaries.* When it is determined that a therapeutic benefit to eligible beneficiaries will result from personal selection of shoes, clothing and incidentals, acquisition from the Veterans Canteen Service or commercial sources is authorized. When dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A are purchased from commercial sources, FPI clearance No. 1206 will be cited on the purchase document.

[49 FR 12593, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 54 FR 40063, Sept. 29, 1989; 61 FR 20492, May 7, 1996; 63 FR 69219, Dec. 16, 1998]

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
808.001 Priorities for use of Government supply sources.

Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.

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

SOURCE: 49 FR 12593, Mar. 29, 1984, unless otherwise noted.

808.001 Priorities for use of Government supply sources.

(a) Procurement will be effected from the following sources in the descending order of priority as indicated herein:

(1) VA excess.

Subpart 808.4—Ordering From Federal Supply Schedules

808.401 General.

The Executive Director and Chief Operating Officer, VA National Acquisition Center, advertises, negotiates, awards the contracts, and is responsible for contract administration for FSS (Federal Supply Schedule) Groups 65 and 89. The Executive Director and Chief Operating Officer issues the Federal Supply Schedules containing the

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necessary information for placing delivery orders with the contractors for the above FSS Groups.

[49 FR 12593, Mar. 29, 1984, as amended at 63 FR 69219, Dec. 16, 1998]

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1—Responsible Prospective Contractors

Sec.

809.104-2 Special standards.

809.106-1 Conditions for preaward surveys.

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.

809.270 Qualified products for convenience/labor saving foods.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

809.403 Definitions.

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

809.405 Effect of listing.

809.406 Debarment.

809.406-1 General.

809.406-3 Procedures.

809.406-4 Period of debarment.

809.407 Suspension.

809.407-1 General.

809.407-3 Procedures.

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

809.505 General rules.

809.508-2 Contract clause.

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

AUTHORITY: 38 U.S.C. 210, 40 U.S.C. 486(c) and 42 U.S.C. 2453(c).

SOURCE: 49 FR 12594, Mar. 29, 1984, unless otherwise noted.

Subpart 809.1—Responsible Prospective Contractors

809.104-2 Special standards.

Standards applicable to subsistence will be established based on preaward surveys prescribed by 809.106-1.

809.106-1 Conditions for preaward surveys.

(a) Preaward on-site evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundry and dry cleaning activities. A committee under the direction of the contracting officer and composed of representatives of the medical service and/or using service chiefs or designees appointed by the facility director will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Department of Veterans Affairs facility or Federal agency. Approved inspection reports of another Department of Veterans Affairs facility will be accepted by Department of Veterans Affairs facilities and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the proposed contract period.

(b) Preaward on-site evaluation of dairy plants will not be made by the Department of Veterans Affairs when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward on-site evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such as

pies, cakes, cookies), the plant where these products are produced or prepared will be inspected and evaluated as provided in paragraph (a) of this section. On-site evaluation will be made at least annually and recorded on VA Form 10-2079, Inspection Report of Bakery.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

Subpart 809.2—Qualified Products

809.206 Acquiring qualified products.

(a) Federal Qualified Products Lists are lists of products qualified under the applicable Federal or interim Federal specification. Such lists may be used as authorized by the appropriate administration or staff office. Requests to receive copies of existing Federal Qualified Products Lists will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (91) for transmittal to General Services Administration. Requests to establish a Federal Qualified Products List for a commodity will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (91), supported by one or more of the following justifications:

(1) The time required for testing after award would unduly delay delivery of the supplies being purchased.

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

(3) The tests would require expensive or complicated testing apparatus not commonly available.

(4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(5) The determination of acceptability would require performance data to supplement technical requirements in the specification.

(b) VA Qualified Products Lists are lists of products qualified by VA under VA specifications or purchase descriptions. Such lists may be established as authorized by the appropriate administration or staff office.

(1) VA Qualified Products Lists will be supported by one or more of the justifications in 809.206(a) or the following:

(i) Where tests result in substantial or repetitive rejections, or

(ii) Where professional requirements of performance, balance, design, or construction cannot economically be developed into clear specifications, and professional judgment is required in determining the acceptability of items meeting VA requirements.

(2) In the event that the requirement for VA Qualified Products List is established for any given product, known suppliers of the type of item required will be notified and given an opportunity to submit samples for inspection, and test based upon guarantee that they will deliver the item to be inspected, provided the item is acceptable. A qualified products list shall not be used as a means of restricting competition to favored suppliers. All suppliers so desiring shall be given an opportunity to have their products tested for acceptability.

(3) Costs involved in the inspection and test will be borne by VA. The supplier will be required to bear the cost of the sample and its transportation to the inspecting point. After inspection, the sample shall be returned to the supplier "as is" unless it is destroyed by inspection or disposed of or retained by VA as authorized by the supplier.

(4) Items which have been accepted for the qualified products list will be subject to constant review for compliance with the applicable specification. Where there is a variance between the specification and item, the supplier shall be requested to furnish an item that conforms to the specification. Failure or inability on the part of the supplier to provide an item that conforms to the specification will be sufficient cause to consider the item unacceptable in response to subsequent invitations.

(5) The acceptance of an item for the qualified products list does not guarantee acceptance in any future purchase, nor does it constitute a waiver of the requirements of the specifications as to acceptance, inspection, testing or other provisions of any future contract involving such item.

(6) Bid invitations covering products which have been included in a qualified products list will include the clause set

forth in FAR 52.209-1 or 52.209-2 as applicable.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

809.270 Qualified products for convenience/labor saving foods.

(a) Each VA medical district's Dietetic Service representative is delegated authority to establish a common Qualified Products List for convenience/labor-saving foods for the use of medical centers within his/her respective district. The medical district Dietetic Service representative will notify the Director, Dietetic Service, VA Central Office, of the establishment of each Qualified Products List and amendments to each established list.

(b) Each medical center is authorized to use its district Qualified Products List. Each medical center may test food of its own choice, but will submit test results to the district Dietetic Service representative. The Dietetic Service representative will coordinate and consolidate the test results and recommendations of individual medical centers within the district in order to avoid unnecessary duplication.

(c) The approved medical district Qualified Products List will be furnished each Supply office within the district. The Supply Services will have access to complete and accurate records of established Qualified Products Lists and all test results. These records will be made available to the Office of Acquisition and Materiel Management, VA Central Office, upon request.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

This subpart prescribes procedures for debarring or suspending contractors and the inclusion of those contractors on the consolidated list of debarred, suspended or ineligible bidders.

809.403 Definitions.

Fact-finding as used in this subpart shall mean a gathering of facts which is accomplished through informal meetings with the contractor, submissions of information, either verbally or in writing, by the contractor, and any other method deemed appropriate by the debarring official.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

809.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Office of Acquisition and Materiel Management (93) shall be responsible for the action described in FAR 9.404(c) (1), (2), (4) and (6).

(b) The Office of Acquisition and Materiel Management (91) shall be responsible for the actions described by FAR 9.404(c) (3) and (5).

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

809.405 Effect of listing.

The Deputy Assistant Secretary for Acquisition and Materiel Management shall make the determinations required by FAR 9.405(a) and 9.405-2 to solicit from, award contracts to, or consent to subcontracts with contractors whose names are included on the consolidated list of debarred, suspended or ineligible contractors.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989]

809.406 Debarment.

809.406-1 General.

(a) The Deputy Assistant Secretary for Acquisition and Materiel Management is the debarring official for the Department of Veterans Affairs.

(b) Any Department of Veterans Affairs employee may submit a recommendation to the Deputy Assistant Secretary for Acquisition and Materiel Management that a firm or individual be debarred by the Department of Veterans Affairs.

(c) Such recommendations must be supported by documentary evidence of a cause listed in FAR 9.406-2.

809.406-3 Procedures.

(a) The Deputy Assistant Secretary for Acquisition and Materiel Management shall, upon a receipt of a recommendation for debarment, appoint a designee to conduct an investigation, initiate debarment and present the facts to the debarring official for consideration and action.

(b) The appointed designee shall issue the proposed debarment notice as required by FAR 9.406-3(c).

(1) If no reply is received from the firm or individual to the notice of proposed debarment, the case will be referred to the debarring official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the appointed designee prior to making a recommendation to the debarring official. If the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment, the designee appointed by the Deputy Assistant Secretary for Acquisition and Materiel Management will conduct a fact-finding as prescribed by FAR 9.406-3(b)(2).

(3) Upon completion of the fact-finding with respect to disputed facts, a written findings of facts will be provided to the debarring official.

(4) The debarring official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

809.406-4 Period of debarment.

The period of debarment will be based upon the circumstances involved but will not, except in unusual circumstances, exceed a period of 3 years. The Deputy Assistant Secretary for Acquisition and Materiel Management may for those firms or individuals debarred by the Department of Veterans Affairs decide to remove the debarment, reduce the period of debarment, or amend the scope of the debarment, if indicated, after review of documentary evidence submitted by or in behalf of the contractor setting forth

the appropriate grounds for granting of such relief. Such grounds may be, but are not limited to, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management or the elimination of the cause for which debarment was imposed.

809.407 Suspension.**809.407-1 General.**

The Deputy Assistant Secretary for Acquisition and Materiel Management is the suspending official for the Department of Veterans Affairs.

809.407-3 Procedures.

(a) Suspension may be recommended by any Department of Veterans Affairs employee. These recommendations will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management and must be supported by documentary evidence of a cause listed in FAR 9.407-2.

(b) The Deputy Assistant Secretary for Acquisition and Materiel Management shall designate an official to initiate suspension, conduct an investigation and present the facts to the suspending official for consideration and appropriate action.

(c) The designee shall issue the proposed suspension notice as required by FAR 9.407-3(c).

(1) If no reply is received from the contractor to the notice of proposed suspension, the case will be referred to the suspending official for decision on the basis of information available.

(2) When a reply is received, the information provided will be considered by the official conducting the suspension proceedings prior to referring the case with recommendations to the suspending official. If the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the proposed suspension, the designee of the Deputy Assistant Secretary for Acquisition and Materiel Management will conduct a fact-finding as prescribed by FAR 9.407-3(b)(2).

(3) Upon completion of the informal hearing with respect to the disputed facts, a written findings of facts will be prepared and presented to the suspending official.

(4) The suspending official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer’s responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discre-

tion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that organizational conflicts of interest may result from (a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) unfair competitive advantage which exceeds a normal flow of benefits from the award of the contract.

809.508–2 Contract clause.

The representation in 852.209–70, Organizational Conflicts of Interest, will be made a part of all solicitations for consulting services.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Department of Veterans Affairs contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director, or designee, will notify the appropriate administrations and staff offices when such pools are approved.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

PART 811—DESCRIBING AGENCY NEEDS

Sec.
811.001 Definitions.

Subpart 811.1—Selecting and Developing Requirements Documents

- 811.104 Items particular to one manufacturer.
- 811.104-70 Purchase descriptions.
- 811.104-71 Bid evaluation and award.
- 811.104-72 Procedure for negotiated procurements.

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Subpart 811.2—Using and Maintaining Requirements Documents

- 811.202 Maintenance of standardization documents.
811.204 Solicitation provisions and contract clauses.

Subpart 811.4—Delivery or Performance Schedules

- 811.404 Contract clauses.

Subpart 811.5—Liquidated Damages

- 811.502 Policy.
811.504 Contract clauses.

Subpart 811.6—Priorities and Allocations

- 811.602 General.

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

SOURCE: 63 FR 17335, Apr. 9, 1998, unless otherwise noted.

811.001 Definitions.

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

(b) *Salient characteristics* are those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are those essential physical or functional features which are identified in the specifications as a mandatory requirement which a proposed “equal” product or material must possess in order for the bid to be considered responsive. Bidders must furnish all descriptive literature and bid samples required by the solicitation to establish such “equality”.

Subpart 811.1—Selecting and Developing Requirements Documents

811.104 Items particular to one manufacturer.

(a) Specifications shall be written in accordance with FAR 11.002 unless otherwise justified by the specification writer and approved by the contracting officer as described in paragraph (b) of

this section. The contract file shall be documented accordingly.

(b) When it is determined that a particular physical or functional characteristic of only one product will meet the minimum requirements of the Department of Veterans Affairs (see FAR 11.104) or that a “brand name or equal” purchase description will be used, the specification writer, whether agency personnel, architect-engineer, or consultant with which the Department of Veterans Affairs has contracted, shall separately identify the item(s) to the contracting officer and provide a full written justification of the reason the particular characteristic is essential to the Government’s requirements or why the “brand name or equal” purchase description is necessary. The contracting officer shall make the final determination whether restrictive specifications or “brand name or equal” purchase descriptions will be included in the solicitation.

(c) Purchase descriptions that contain references to one or more brand name products may be used only in accordance with 811.104–70, 811.104–71, and 811.104–72. In addition, purchase descriptions that contain references to one or more brand name products shall be followed by the words “or equal,” except when the acquisition is fully justified under FAR 6.3 and VAAR 806.3. Acceptable brand name products should be listed in the solicitation. Where a “brand name or equal” purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products are determined by the Government to fully meet the salient characteristics listed in the invitation. The contract file will be documented in accordance with paragraph (b) of this section, justifying the need for use of a brand name or equal description.

(d) “Brand name or equal” purchase descriptions shall set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, such requirement

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should be specified. Purchase descriptions shall contain the following information to the extent available and include such other information as is necessary to describe the item required:

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

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

(f) Except as noted in paragraph (d) of this section, purchase descriptions shall not include either minimum or maximum restrictive dimensions, weights, materials or other salient characteristics which are unique to a brand name product or which would tend to eliminate competition or other products which are only marginally outside the restrictions. However, purchase description may include restrictive dimensions, weights, materials or other salient characteristics if such restrictions are determined in writing by the user to be essential to the Government's requirements, the brand name of the product is included in the purchase description, and all other determinations required by 811.104 are made.

811.104-70 Purchase descriptions.

- (a) When any purchase description, including a "brand name or equal" purchase description, is used in a solicitation for a supply contract to describe required items of mechanical equipment, the solicitation will include the clauses in 852.211-70 (Service Data Manual) and in 852.211-71 (Guarantee).
- (b) Solicitations using "brand name or equal" purchase descriptions will

contain the "brand name or equal" clause in 852.211-77, and the provision set forth at FAR 52.214-21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202-5(d) when utilizing the descriptive literature provision.

(c) Except as provided in paragraph 811.104-70(d), when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the solicitation, for completion by the bidder:

Bidding on:

Manufacturer name _____
 Brand _____
 No. _____

(d)(1) When component parts of an end item are described in the solicitation by a "brand name or equal" purchase description and the contracting officer determines that the clause in 811.104-70(b) is inapplicable to such component parts, the requirements of 811.104-70(c) shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts (list the component parts to which the clause does not apply): and

(2) In the alternative, if the contracting officer determines that the clause in 811.104-70(b) shall apply to only certain such component parts, the requirements of 811.104-70(c) shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts (list the component parts to which the clause applies):

(e) When a solicitation contains "brand name or equal" purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may

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require the submission of bid samples in the case of bidders offering "or equal" products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214-20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name or Equal" clause, 852.211-77(c)(1) and (2), even though bid samples may not be required.

811.104-71 Bid evaluation and award.

(a) Bids offering products that differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 852.211-77 that the offered products are clearly identified in the bids and are equal in all material respects to the products specified.

(b) Award documents shall identify, or incorporate by reference, an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the descriptions of the end items contain "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.211-77 was applicable to such component parts or accessories (see 811.104-70(d)(2)).

811.104-72 Procedure for negotiated procurements.

(a) The policies and procedures prescribed in 811.104-70 and 811.104-71 should be used as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The clause at 852.211-77 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that

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such offered products are equal in all material respects to the products referenced.

Subpart 811.2—Using and Maintaining Requirements Documents

811.202 Maintenance of standardization documents.

(a) *Military and departmental specifications.* Contracting officers may, when they deem it to be advantageous to the Department of Veterans Affairs, utilize these specifications when procuring supplies and equipment costing less than the simplified acquisition threshold. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (b)(2) and (b)(3) of this section.

(b) *Nutrition and Food Service specifications.* (1) The Department of Veterans Affairs has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Department of Veterans Affairs use, are contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL. A copy of Part IV of this catalog and the IMPS may be obtained from any Department of Veterans Affairs contracting officer.

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

(3) Except as authorized in part 846 of this chapter, contracting officers shall not deviate from the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, and the IMPS without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(4) Items of meat, cured pork and poultry not listed in either Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, or the IMPS, will not be purchased without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

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

(2) Department of Veterans Affairs specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Facility requirements for these specifications will be requisitioned from that source.

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

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

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

811.204 Solicitation provisions and contract clauses.

Specifications. When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include desired options and shall conform to the following:

Shall be type _____, grade _____, in accordance with (type of specification) No. _____, dated _____ and amendment _____ dated _____, except paragraphs _____ and _____ which are amended as follows:

Subpart 811.4—Delivery or Performance Schedules

811.404 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.211-8 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

Subpart 811.5—Liquidated Damages

811.502 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FAR 11.502. In making this decision, consideration will be given to whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is justified. Liquidated damages provisions will not be included as insurance against selection of a non-responsible bidder, as a substitute for efficient contract administration, or as a penalty for failure to perform on time.

811.504 Contract clauses.

When the liquidated damages clause prescribed in FAR 52.211-11 or 52.211-12

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is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.211-78 will be included in the contract.

Subpart 811.6—Priorities and Allocations

811.602 General.

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

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

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Department of Veterans Affairs in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Deputy Assistant Secretary for Acquisition and Materiel Management (90):

(1) A description of the maintenance and repair project or the new item, whichever is applicable;

(2) The critical material and the amount required;

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

(4) The Department of Veterans Affairs contract or purchase order number;

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

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided;

(7) The nature and extent of the emergency that will be generated at the station, e.g.,

(i) damage to the physical plant,

(ii) impairment of the patient care program,

(iii) creation of safety hazards, and

(iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials; and

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Chief Facilities Management Officer, Office of Facilities Management, to be awarded and administered by the facility contracting officer.

PART 812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

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

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

SOURCE: 63 FR 17338, Apr. 9, 1998, unless otherwise noted.

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) Notwithstanding prescriptions contained elsewhere in the VAAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part.

(b) The provision and clause in the following VAAR sections shall be used, in accordance with the prescriptions contained therein or elsewhere in the

VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.219-70, Veteran-owned small business.

(2) 852.270-4, Commercial advertising.

(c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.207-70, Report of employment under commercial activities.

(2) 852.211-71, Guarantee clause.

(3) 852.211-72, Inspection.

(4) 852.211-73, Frozen processed foods.

(5) 852.211-74, Telecommunications equipment.

(6) 852.211-75, Technical industry standards.

(7) 852.214-70, Caution to bidders-bid envelopes.

(8) 852.216-70, Estimated quantities for requirements contracts.

(9) 852.229-70, Purchases from patient's funds.

(10) 852.229-71, Purchases for patients using Government funds and/or personal funds of patients.

(11) 852.233-70, Protest content.

(12) 852.237-7, Indemnification and Medical Liability Insurance.

(13) 852.237-70, Contractor responsibilities.

(14) 852.237-71, Indemnification and insurance (vehicle and aircraft service contracts).

(15) 852.252-1, Provisions or clauses requiring completion by the offeror or prospective contractor.

(16) 852.270-1, Representatives of contracting officers.

(17) 852.270-2, Bread and bakery products.

(18) 852.270-3, Purchase of shellfish.

(d) The clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items, provided the contracting officer

determines that use of the clauses is consistent with customary commercial practices.

(1) 852.211-70, Requirements for operating and maintenance manuals.

(2) 852.211-77, Brand name or equal.

(e) The contracting officer shall insert the clause in 852.271-70, Services provided eligible beneficiaries, by reference, in all requests for quotations, solicitations, and contracts meeting the prescription contained therein.

(f) Clauses are not required for micro-purchases using the procedures of this part or part 813. However, this does not prohibit the use of any clause prescribed in this part or elsewhere in this chapter in micro-purchases when determined by the contracting officer to be in the Government's best interest.

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

(1) 852.273-70, Late offers.

(2) 852.273-71, Alternative negotiation techniques.

(3) 852.273-72, Alternative evaluation.

(4) 852.273-73, Evaluation—health-care resources.

(5) 852.273-74, Award without exchanges.

[63 FR 17338, Apr. 9, 1998, as amended at 64 FR 69934, Dec. 15, 1999; 68 FR 3468, Jan. 24, 2003]

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

Agency procedures for approval of waivers: Waivers to tailor solicitations in a manner that is inconsistent with customary commercial practice shall be prepared by contracting officers in accordance with FAR 12.302(c). Waiver requests shall be submitted to the contracting officer's next higher level supervisor for approval. Approved requests shall be retained in the contract file.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 813.1—Procedures

Sec.

813.106-70 Oral purchase orders.

Subpart 813.3—Simplified Acquisition Methods

813.302 Purchase orders.

813.302-5 Clauses.

813.307 Forms.

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

Subpart 813.1—Procedures

813.106-70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Department of Veterans Affairs, may be used for transactions not in excess of \$2,500. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against FSS Contracts. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106-3.

[52 FR 28560, July 31, 1987. Redesignated and amended at 64 FR 69935, Dec. 15, 1999]

Subpart 813.3—Simplified Acquisition Methods

813.302 Purchase orders.

813.302-5 Clauses.

When using VA Forms 90-2138 or 90-2138-ADP for maintenance contracts involving services performed on Government property which have the potential for property damage and liability claims, the contracting officer shall insert in the purchase order the Contractor Responsibilities clause found at 852.237-70. Applicable maintenance contracts include but are not limited to

window washing, pest control, and elevator maintenance.

[64 FR 69935, Dec. 15, 1999]

813.307 Forms.

(a) VA Form 90-2138, Order for Supplies or Services, VA Form 90-2139, Order for Supplies or Services (Continuation), VA Form 90-2138-ADP, Purchase Order for Supplies or Services, and VA Form 2139-ADP, Order for Supplies and Services (Continuation), provide in one set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of but in the same manner as Optional Form 347, Order for Supplies or Services, Optional Form 348, Order for Supplies or Services Schedule—Continuation, and Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following order forms are for use when ordering the indicated medical, dental and ancillary services up to \$10,000 per authorization when such services are not available under existing contracts.

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

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

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

(c) In authorizing patient travel as set forth in VA Manual MP-1, Part II, Chapter 3, VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as provided by that manual.

(d) Standard Form 182, Request, Authorization, Agreement, and Certification of Training, will be utilized for the procurement of training in the manner prescribed in 870.104.

(e) VA Form 10-2421, Prosthetics Authorization and Invoice, will be used for indicated procurements not in excess of \$300.

[49 FR 12599, Mar. 29, 1984. Redesignated and amended at 64 FR 69934, Dec. 15, 1999]

PART 814—SEALED BIDDING

Subpart 814.1—Use of Sealed Bidding

Subpart 814.1—Use of Sealed Bidding

- Sec.
- 814.103 Policy.
- 814.103-1 General.
- 814.104 Types of contracts.
- 814.104-70 Fixed-price contracts with escalation.

Subpart 814.2—Solicitation of Bids

- 814.201 Preparation of invitations for bids.
- 814.202 General rules for solicitation of bids.
- 814.202-4 Bid samples.
- 814.203 Methods of soliciting bids.
- 814.203-1 Mailing or delivery to prospective bidders.
- 814.204 Records of invitations for bids and records of bids.
- 814.205 Solicitation mailing lists.
- 814.205-1 Establishment of lists.
- 814.205-2 Removal of names from solicitation mailing lists.
- 814.205-5 Release of solicitation mailing lists.
- 814.208 Amendment of invitation for bids (construction).

Subpart 814.3—Submission of Bids

- 814.301 Responsiveness of bids.
- 814.302 Bid submission.
- 814.304 Late bids, late modifications of bids, or late withdrawal of bids.
- 814.304-2 Notification to late bidders.
- 814.304-4 Records.

Subpart 814.4—Opening of Bids and Award of Contract

- 814.402 Opening of bids.
- 814.403 Recording of bids.
- 814.404 Rejection of bids.
- 814.404-1 Cancellation of invitations after opening.
- 814.404-2 Rejection of individual bids.
- 814.404-70 Questions involving the responsiveness of a bid.
- 814.407 Mistakes in bids.
- 814.407-3 Other mistakes disclosed before award.
- 814.407-4 Mistakes after award.
- 814.408 Award.
- 814.408-70 Award when only one bid is received.
- 814.408-71 Recommendation for award (construction).
- 814.409 Information to bidders.

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

SOURCE: 49 FR 12599, Mar. 29, 1984, unless otherwise noted.

814.103 Policy.

814.103-1 General.

Contracts in excess of the small purchase limitation or in excess of \$1,000 for contracts made for repairs to property acquired by the Department of Veterans Affairs under chapter 37, title 38, United States Code, will be made by sealed bidding when all of the elements necessary for sealed bidding as prescribed in FAR 6.401(a) are present.

[51 FR 23068, June 25, 1986, and 52 FR 28559, July 31, 1987, as amended at 54 FR 40063, Sept. 29, 1989]

814.104 Types of contracts.

814.104-70 Fixed-price contracts with escalation.

When contracts of this nature are authorized pursuant to 816.102(b), contracting officers will be guided by the provisions of FAR 16.203.

Subpart 814.2—Solicitation of Bids

814.201 Preparation of invitations for bids.

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or National Acquisition Center division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101-24-84. A series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted and become contracts in the same fiscal year but, because of procurement leadtime, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

(b) Invitations for construction contracts will bear the applicable IFB number and project number, if assigned.

(c) In order to preclude adverse criticism of the Department of Veterans Affairs by prospective bidders relative to the disclosure of bid prices prior to bid opening, the provision entitled "Caution to Bidders Bid-Envelopes," as set forth in 852.214-70, will be prominently placed in all invitations for bids.

(d) To realize the greatest possible price advantage for the Government, items that may be processed by a contractor to effect a reduction in cost factors such as production, inspection and delivery, may be listed for award on both individual item and summary item bases. Items will be listed individually and, in addition, a summary price will be solicited for those items the contracting officer determines to be of a related character and normally handled by a majority of prospective bidders.

(1) When different products are to be combined for a summary price, the quantity, unit and unit price columns opposite the summary item will be crossed out, e.g.:

(Item No.) Summary bid for furnishing items _____ to _____ inclusive on an all or none basis:

Quantity	Unit	Unit Price	Summary
XX	XX	XX	\$ XX

(Bidder will enter summary amount.)

(2) When a single unit price is solicited for a single product for delivery to various destinations, or for multiple deliveries, the total quantity required will be listed opposite the summary item, e.g.:

(Item No.) Summary bid for furnishing items _____ to _____ inclusive on all or none basis:

Quantity	Unit	Unit Price	Summary
XX	XX	XX	\$ XX

(Bidder will enter unit price and summary amount.)

(3) Invitations containing a summary bid request will contain the following statement:

The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(e) Bid invitations for supplies, equipment, or services (other than construction) must define the extent to which alternate bids will be authorized and considered. Alternates specified on construction projects will be considered for acceptance only as a part of the basic item.

(1) When an alternate item will be considered only if no bids or insufficient bids are received on the item desired, the clause set forth in 852.214-71(a) will be included in the invitation.

(2) When an alternate item will be considered on an equal basis with the item specified, the clause set forth in 852.214-71(b) will be included in the invitation.

(3) In addition to the clauses referenced in paragraph (e) (1) or (2) of this section, the clause set forth in 852.214-71(c) will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

(f) When a contracting officer determines that it will be advantageous to the Government to make the award by group or groups of items, a provision for such award will be included in the invitation for bids.

(1) This may apply when:

(i) The items in the group or groups are readily available from the sources to be solicited; and

(ii) It is desirable to make a minimum number of contracts; or

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

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

(2) Solicitations for supplies and services, other than construction, will contain the provision set forth in FAR 52.214-22.

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Department of Veterans Affairs' estimate, and the

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amount of funds available. Such schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3, \$ _____.

Alternate items in order of priority. Furnish all labor, material, equipment, etc., to paint:

Item No. 2—Building No. 1 only \$ _____.

Item No. 3—Building No. 2 only \$ _____.

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2, or a combination of Item Nos. 2 and 3. Offerors should quote a price on each item listed.

[49 FR 12599, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 30044, July 18, 1989; 63 FR 69219, Dec. 16, 1998]

814.202 General rules for solicitation of bids.

814.202-4 Bid samples.

When it has been determined that samples are necessary to the proper awarding of a contract, the provision set forth in 852.214-73 will be added to the provision in FAR 52.214-20.

[49 FR 12599, Mar. 29, 1984, as amended at 52 FR 49017, Dec. 29, 1987]

814.203 Methods of soliciting bids.

814.203-1 Mailing or delivery to prospective bidders.

The contracting officer will include either a bid envelope, or Optional Form 17, Sealed Bid Label, with each invitation for bids furnished to prospective bidders.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987; 58 FR 48974, Sept. 21, 1993]

814.204 Records of invitations for bids and records of bids.

(a) A single register will be established and maintained by the issuing office on a fiscal year basis for all solicitations by invitations for bid or requests for proposal number, date of issue, date of opening, commodity or service involved and disposition, i.e., contract number or purchase order number or, when applicable, no award.

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

814.205 Solicitation mailing lists.

814.205-1 Establishment of lists.

From the solicitations mailing list applications received, each contracting activity will compile and keep current a Solicitations Mailing List file. The lists will be maintained according to the commodity classification or group of items normally listed on the same invitation for bids.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.205-2 Removal of names from solicitation mailing lists.

Except as provided for in FAR 14.205-2, no Department of Veterans Affairs contracting officer, or other employee, shall remove from the solicitation mailing list the name of any prospective solicitation.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28559, July 31, 1987]

814.205-5 Release of solicitation mailing lists.

When invitations for bids for supply and service contracts have been issued, contracting officers may furnish, upon request of an individual or institution having a bona fide interest in such information, a list of the prospective bidders to whom invitations for bids were submitted. The provisions of FAR 14.205-5 will be observed with respect to invitations for bids for construction contracts.

814.208 Amendment of invitation for bids (construction).

Amendments will be sent to holders of drawings and specifications by certified mail, return receipt requested. (Amendments may be made by telegram, if time does not permit mailing.)

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Subpart 814.3—Submission of Bids

814.301 Responsiveness of bids.

Where the timeliness of the submission of a bid, modification or withdrawal cannot be administratively determined in accordance with FAR 14.301, the matter will be submitted by the contracting officer directly to the Comptroller General for decision. The submission will include copies of all pertinent papers. A copy of each submission will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management.

814.302 Bid submission.

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

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 791, Jan. 7, 1985]

814.304 Late bids, late modifications of bids, or late withdrawal of bids.

814.304-2 Notification to late bidders.

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

814.304-4 Records.

All bids received by mail (or telegram where authorized) will be time and date stamped immediately upon receipt at the VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, and it will establish whether or not the delay was due to mishandling on the part of VA.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989; 63 FR 69219, Dec. 16, 1998]

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Subpart 814.4—Opening of Bids and Award of Contract

814.402 Opening of bids.

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

(b) The form and amount of bid security and name of surety will be read aloud and recorded.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 792, Jan. 7, 1985]

814.403 Recording of bids.

The information required for bid evaluation shall be recorded on the appropriate Abstract of Offers form (SF 1409 or OF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FAR 14.403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeouts, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

[49 FR 12599, Mar. 29, 1985, as amended at 61 FR 11586, Mar. 21, 1996; 63 FR 69219, Dec. 16, 1998]

814.404 Rejection of bids.

814.404-1 Cancellation of invitations after opening.

(a) A copy of each invitation for bids which is canceled as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

(b) The authority to approve cancellation of invitations for bid after

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opening and the authority to approve the acquisition after cancellation as provided in FAR 14.404-1(e) is delegated to the head of the contracting activity. The contracting officer will submit a D&F to the head of the contracting activity for signature.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28560, July 31, 1987; 63 FR 69219, Dec. 16, 1998]

814.404-2 Rejection of individual bids.

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

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

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

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

NOTE: In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as non-responsive since consideration of such an offer would unfairly disadvantage other bidders.

814.404-70 Questions involving the responsiveness of a bid.

Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted to the Comptroller General through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate. Pertinent documentation must accompany the submission.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996; 63 FR 69219, Dec. 16, 1998]

814.407 Mistakes in bids.

814.407-3 Other mistakes disclosed before award.

(a) In accordance with the provisions of the FAR 14.407-3(e), the authority of the Secretary to make the administrative determinations set forth in FAR 14.407-3 (a), (b), (c), and (d) is hereby delegated, without power of redelegation, to the Deputy Assistant Secretary for Acquisition and Materiel Management. This delegation in no way impairs the delegations contained in Comptroller General decision B-122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, after complying with the provisions of FAR 14.407-3, the contracting officer will submit the complete file to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, for an administrative determination. Based upon the evidence submitted, the Deputy Assistant Secretary for Acquisition and Materiel Management will determine the action to be taken by the contracting officer. Prior to its release to the contracting officer, this determination will be submitted to the General Counsel (025) for approval. Pending receipt of the determination, no award shall be made.

(c) Based on the evidence, when the Deputy Assistant Secretary for Acquisition and Materiel Management believes that the case should be submitted to the Comptroller General for

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decision, he/she will prepare the submission and forward it to the Comptroller General through the General Counsel (025). The decision of the Comptroller General will be furnished to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team. A copy of each such decision will be furnished to the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 61 FR 11586, Mar. 21, 1996. Redesignated and amended at 63 FR 69219, Dec. 16, 1998]

814.407-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FAR 14.407-4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team Division.

(b) For mistakes in bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.407-4, will be forwarded to the General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, for legal coordination. The results of this coordination will be transmitted to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team. The final determination on the alleged mistake in bid after award will be made by the contracting officer.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, will maintain the agency records of mistakes in bids after award required by FAR 14.407-4.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989, as amended at 61 FR 11586, Mar. 21, 1996. Redesignated and amended at 63 FR 69219, Dec. 16, 1998]

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814.408 Award.

814.408-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing, and included on or attached to the abstract of bids.

[49 FR 12599, Mar. 29, 1984. Redesignated at 63 FR 69219, Dec. 16, 1998]

814.408-71 Recommendation for award (construction).

(a) For Central Office contracts, the Chief Facilities Management Officer, Office of Facilities Management, after analyzing all bids received, will submit a memorandum to the Secretary (00) recommending award or other disposition of the project. A copy of each of the following will accompany the memorandum:

- (1) The invitation.
- (2) Each bid received.
- (3) The abstract.
- (4) Any other pertinent data.

(b) On facility level contracts, the Chief, Engineering Service, will analyze all bids received and submit to the contracting officer a memorandum recommending award or other disposition of the project. However, the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor shall be made by the contracting officer alone.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996. Redesignated at 63 FR 69219, Dec. 16, 1998]

814.409 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the Department of Veterans Affairs.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information

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and will be released to persons outside VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30045, July 18, 1989; 54 FR 40063, Sept. 29, 1989. Redesignated at 63 FR 69219, Dec. 16, 1998]

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.5—Unsolicited Proposals

Sec.

815.504 Advance guidance.

815.506 Department procedures.

815.506-1 Receipt and initial review.

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

Subpart 815.8—Price Negotiation

815.804-70 Preproduction and start-up and other nonrecurring costs.

815.805-4 Technical analysis.

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

SOURCE: 49 FR 12604, Mar. 29, 1984, unless otherwise noted.

Subpart 815.5—Unsolicited Proposals

SOURCE: 51 FR 6005, Feb. 19, 1986, unless otherwise noted.

815.504 Advance guidance.

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be

favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

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

815.506 Department procedures.

(a) The Chief, Acquisition and Materiel Management Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Deputy Assistant Secretary for Acquisition and Materiel Management is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by the Department of Veterans Affairs will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) Determine if advance guidance as specified in FAR 15.504 is necessary (2) request that the offeror provide the necessary information if it is determined that the formal evaluation prescribed in FAR 15.506-2 is appropriate; and (3) establish an estimated due date for completion of the review process.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989; 54 FR 42508, Oct. 17, 1989]

815.506-1 Receipt and initial review.

(a) When VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506-1(a) and is related to the mission of VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals

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which will be evaluated. The log will indicate:

(1) The date the proposal was received;

(2) The date that the unsolicited proposal has been determined to warrant a comprehensive evaluation;

(3) A description of the proposal;

(4) The offices requested to evaluate the proposal and the date such offices are requested to return their evaluations;

(5) The date the reviewing offices finalize their respective evaluation; and

(6) The final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a) (1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (93) prior to proceeding with negotiation. In order to obtain the approval, the VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR Subpart 6.3 and results of any synopsis required by FAR Subpart 5.2. The Deputy Assistant Secretary for Acquisition and Materiel Management will coordinate the proposal with the cognizant VA Central Office program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a re-

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viewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

The Head of the Contracting Activity (as defined in 802.1) is delegated authority to permit correction of mistakes in proposals before award consistent with FAR 15.607.

[54 FR 45736, Oct. 31, 1989]

Subpart 815.8—Price Negotiation

815.804-70 Preproduction and start-up and other nonrecurring costs.

In evaluating start-up and other nonrecurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspector General for Policy, Planning and Resources (53), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

[49 FR 12604, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

815.805-4 Technical analysis.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing

under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602-70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805-4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805-4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805-5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for review and comment. When deemed advisable, the Deputy Assistant Secretary for Acquisition and Materiel Management (93) will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602-70.

PART 816—TYPES OF CONTRACTS

Subpart 816.1—Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

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

Subpart 816.1—Selecting Contract Types

816.102 Policies.

(a) Contracts which include an economic price adjustment provision other than those contracts awarded by the National Cemetery System for monuments or those contracts that contain the clause for service contracts (FAR 22.1006(c)) require the prior approval of

the Deputy Assistant Secretary for Acquisition and Materiel Management (90). The request for approval shall clearly set forth the need for the provision.

(b) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than one fiscal year, is to contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the availability of appropriations in the ensuing year(s), and

(2) No service is to be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(c) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by “no year appropriations” are not subject to the requirements of paragraph (b) of this section.

[49 FR 12607, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 30045, July 18, 1989; 61 FR 20492, May 7, 1996]

Subpart 816.70—Unauthorized Agreements

816.7001 Letters of availability.

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier primarily for the purpose of obtaining a place on the supplier’s production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized in FAR 16.603.

(b) *Policy.* (1) Unless specifically authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, letters of availability are not to be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

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

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

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to act as efficiently and expeditiously as possible on all procurement actions.

[49 FR 12607, Mar. 29, 1974, as amended at 54 FR 30044, July 18, 1989; 54 FR 40064, Sept. 29, 1989]

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—Multi-Year Contracting

Sec.
817.105 Policy.
817.105-1 Uses.

Subpart 817.2—Options

817.202 Use of options.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

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

SOURCE: 49 FR 12608, Mar. 29, 1984, unless otherwise noted.

Subpart 817.1—Multi-Year Contracting

817.105 Policy.

817.105-1 Uses.

(a) Pursuant to Title 38, United States Code, Chapter 1, Section 114 (as amended by Pub. L. 101-237), multiyear contracting not exceeding 5 years is authorized for obtaining supplies and services when the Secretary has made the following determinations:

(1) Appropriations are available for obligation for the total payments for the fiscal year the contract is entered into plus the estimated amount of any cancellation charges.

(2) The contract is in the best interest of the Government due to the effect it would have in:

- (i) Reducing cost;
- (ii) Achieving contract administration and other efficiencies;
- (iii) Increasing quality contract performance;
- (iv) Encouraging effective competition.

(3) During the contract period:

- (i) There is a continuing need for the supplies or services;
- (ii) There is little likelihood of substantial changes in need for the supplies and services in terms of quantity or rate of delivery; and
- (iii) The specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to a prospective contractor's ability to perform in accordance with the specifications and other contract terms are not excessive;

(5) The use of a multiyear contract will not inhibit competition from small business firms;

(6) In the case of a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, there is no substantial likelihood that increased competition will occur during the term of the contract that would make the contract prices higher than would be reasonable.

(b) The authority of the Secretary to enter into multiyear contracts and to make the determinations specified in 817.102-1(a) of this section is delegated as follows:

(b) The authority of the Secretary to enter into multiyear contracts and to make the determinations specified in 817.102-1(a) of this section is delegated as follows:

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(1) *Heads of contracting activities.* For contracts not requiring legal/technical reviews pursuant to 801.602-70 (for purposes of determining applicability of the thresholds, the total dollar amount of the contract over its full multiyear term will be used), and which do not contain a first year cancellation ceiling which exceeds 20 percent of the total dollar amount of the contract over the full multi-year term.

(2) *Deputy Assistant Secretary for Acquisition and Materiel Management,* will approve all proposed uses of multiyear contracts not authorized for approval by heads of contracting activities. For approval purposes, the head of the contracting activity will justify and document the use of a multiyear contract against each of the criteria specified in 817.102-1 (a)(1) through (a)(6) of this section. The justification will additionally delineate the cancellation ceiling and the method used for calculating that ceiling and will specify the advantages of multiyear contracts over other alternative methods, e.g., option year contracts.

(c) Cancellation ceilings will be carefully developed in accordance with FAR 17.106-1.

[54 FR 980, Jan. 11, 1989, as amended at 57 FR 44129, Sept. 24, 1992. Redesignated and amended at 63 FR 69219, Dec. 16, 1998]

Subpart 817.2—Options

817.202 Use of options.

All solicitations developed pursuant to Office of Management and Budget

Circular A-76 (Revised) cost comparisons will provide for one year renewal options as prescribed in FAR Subpart 17.2. Requests to use less or more than the prescribed contract period for Circular A-76 (Revised) cost comparisons will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (90).

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 980, Jan. 11, 1989; 57 FR 44129, Sept. 24, 1992]

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in 817.402(b), no leader company contracts shall be initiated or consummated.

(b) The Deputy Assistant Secretary for Acquisition and Materiel Management (90) may designate a contracting officer to enter into a leader company contract when considered beneficial to the Department and the Government. When a contracting officer is designated the authority to enter into a leader company contract, the designation will be by name for a specific contract. The proposed contract with a determination and finding will be submitted for legal review in accordance with 801.602-71.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 980, Jan. 11, 1989; 54 FR 40064, Sept. 29, 1989]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.

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Subpart 819.70—Veteran-Owned and Operated Small Businesses

819.7001 Policy.

819.7002 Definition.

819.7003 Procedure.

819.7004 Waiver of the use of veteran-owned firms.

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

SOURCE: 49 FR 12608, Mar. 29, 1984, unless otherwise noted.

819.000 Scope of part.

This subpart sets forth the Department of Veterans Affairs small business program including section 8(a) contracts with Small Business Administration (SBA) and unilateral set-asides. It establishes responsibility for making such determinations, reviewing determinations and evaluation of the program.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

Subpart 819.2—Policies

819.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (00SB) is responsible for the overall supervision of the Department of Veterans Affairs Small and Disadvantaged Business Utilization program and will assist administrations and key staff officials in developing their respective small business programs.

(b) The Chief Facilities Management Officer will develop and coordinate the Department small business program, as it affects construction projects, with the OSDBU.

(c) The Director, Veterans Canteen Service (VCS), will designate an employee of his/her organization to serve as liaison between the VCS and the Office of Small and Disadvantaged Business Utilization on small business problems affecting the VCS.

(d) The Director, National Cemetery System; Under Secretary for Benefits; Chief Facilities Management Officer; Deputy Assistant Secretary for Administration; Director, Acquisition Operations and Analysis Service; Executive Director and Chief Operating Officer, VA National Acquisition Center; and Directors of field facilities with acquisition and materiel management activities will designate an employee of their respective organizations to serve as a small and small disadvantaged business specialist. This employee will

be a full-time employee of the respective contracting activity, will be familiar with the supplies and services purchased at the activity, and will be fully cognizant of the regulations implementing the Small Business Act. The principal duties will include assisting the Small Business Administration Procurement Center Representative (if assigned) in activities and functions relating to sections 8 and 15 of the Small Business Act. The name, telephone number, and mailing symbol of each designee and any successor will be forwarded to the Director, Office of Small and Disadvantaged Business Utilization, through the Deputy Assistant Secretary for Acquisition and Materiel Management.

[49 FR 12608, Mar. 29, 1984, as amended at 52 FR 37317, Oct. 6, 1987; 54 FR 40064, Sept. 29, 1989; 55 FR 49899, Dec. 3, 1990; 56 FR 44011, Sept. 6, 1991; 63 FR 69219, Dec. 16, 1998]

819.202-5 Data collection and reporting requirements.

Administration heads, staff office directors and heads of contracting activities will, in addition to the responsibilities designated in FAR 19.202-5, cooperate with the Office of Small and Disadvantaged Business Utilization in formulating specific socio-economic procurement goals and providing other data necessary for goal assessment.

(a) Each VA acquisition activity shall establish goals for expenditure of funds with preferred businesses within their projected annual budget. The preference programs supported by VA are listed in paragraph (c) of this section. OSDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(b) A Procurement Preference Program Goals Report (Report Control Symbol 00-0427) shall be submitted annually by each acquisition activity to reach OSDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal.

(c) All acquisition activities shall submit information and procurement preference goals identified in paragraphs (c)(1) through (c)(8) of this sec-

tion. In addition, the Office of Acquisition and Materiel Management, the VA National Acquisition Center and the Office of Facilities Management shall submit the information identified in paragraphs (c)(1) through (c)(11) of this section. Goals shall be expressed in dollars and rounded to the nearest thousand.

(1) Estimate of the total procurement dollar expenditures (excluding delivery orders against General Services Administration (GSA) FSS contracts).

(2) Small business awards (includes paragraphs (c)(3) through (c)(5) of this section).

(3) Minority business direct awards.

(4) SBA 8(a) awards.

(5) Women-owned business awards.

(6) Veteran-owned business awards (includes paragraphs (c)(8) and (c)(9) of this section).

(7) Vietnam era veteran-owned business awards (including disabled Vietnam era veterans).

(8) Disabled veteran-owned business awards (other than Vietnam era disabled veterans).

(9) Estimate of total dollar value of subcontracts to be awarded by reporting prime contractors.

(10) Subcontracts to be awarded to small business concerns by prime contractors.

(11) Subcontracts to be awarded to small disadvantaged business concerns by prime contractors.

(d) Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with SBA.

(e) As an addendum to the report, each acquisition activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category. This explanation shall be specific and will be used by OSDBU to justify Department shortfalls.

(f) Upon review by OSDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goals submitted. Based on documents submitted,

OSDBU will make a final determination on the goal assignment.

(g) Accomplishment of goals identified in paragraphs (c)(1) through (c)(8) of this section will be determined by OSDBU from data reported by acquisition activities into the VA Federal Procurement Data System (FPDS).

(h) Achievement of subcontracting goals shall be reported by the Office of Facilities Management, the Office of Acquisition and Materiel Management, and the VA National Acquisition Center on a semiannual basis, to be received by OSDBU not later than April 30 for the period ending March 31, and November 1 for the period ending September 30.

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989; 55 FR 49900, Dec. 3, 1990; 56 FR 44011, Sept. 6, 1991; 63 FR 69220, Dec. 16, 1998]

819.202-70 Additional responsibilities.

In addition to the duties designated in FAR 19.202, VA contracting officers will perform the following functions in furtherance of the small business program:

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business, including veteran, and Vietnam era and disabled veteran-owned concerns.

(b) Promote the disadvantaged business program through the SBA 8(a) procedures set forth in Subpart 819.8.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides. Class set-asides, established in accordance with criteria in FAR 19.503, shall be reviewed at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn. Updated lists of acquisitions reserved for small business on a class basis shall be maintained by heads of contracting activities.

(d) On an annual basis, VA acquisition personnel shall request a Procurement Automated Source System (PASS) listing of veteran-owned, including Vietnam era and disabled, and woman-owned businesses capable of meeting identified requirements. Acquisition personnel will utilize PASS

as a primary source file. Firms identified on the PASS list shall be included on solicitation mailing lists.

(e) Assure that small business firms are identified on bid abstracts.

(f) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent feasible.

(g) Assist and counsel small business firms with individual problems.

(h) Provide for counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards.

(i) Attend conferences and meetings publicizing the small business program.

(j) Promote the award of research contracts to small business firms.

(k) Promote goals for small business, small business set-asides, small business subcontracting, 8(a) procurements, and purchases from women-owned businesses.

(l) Review all urgent and sole source procurements to determine that they are sparingly made, thoroughly documented and approved by the head of the contracting activity.

(m) If the acquisition activity is assigned an SBA Procurement Center Representative (PCR), assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to the PCR's official duties.

(n) Encourage technical and requirements personnel to identify veteran-owned and women-owned small business sources.

(o) Assure that plans are forwarded as specified in FAR 19.705-6(b).

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 51 FR 23070, June 25, 1986; 52 FR 28559, July 31, 1987; 55 FR 49900, Dec. 3, 1990; 56 FR 44011, Sept. 6, 1991; 63 FR 69220, Dec. 16, 1998]

Subpart 819.5—Set-Asides for Small Business

819.502-2 Total set-asides.

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page ____, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page ____, applies to items ____ through ____ in this solicitation.

(b) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

(c) All proposed procurement for construction anticipated to cost between \$10,000 and \$3 million and all proposed procurements for architect-engineer services construction projects of \$3 million and less will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization.

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 63 FR 69220, Dec. 16, 1998]

819.502-3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation, the solicitation for bids shall state the appropriate product or service classification and appropriate size standard and the following statement shall be placed on the face page:

Notice of partial small business set-aside, page ____, applies to Item ____ through Item ____ in this solicitation.

[63 FR 69220, Dec. 16, 1998]

Subpart 819.6—Certificates of Competency and Determinations of Eligibility

819.602-3 Appealing Small Business Administration's decision to issue Certificates of Competency.

Formal VA appeals of an initial concurrence by the SBA Central Office in an SBA Regional Office decision to issue a Certificate of Competency (CoC) will be processed as follows:

(a) When the contracting officer believes that VA should formally appeal the concurrence by the SBA Central

Office in an SBA Regional Office decision to issue a CoC, the contracting officer will so notify the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) in writing within five business days after receipt of the SBA Central Office's written confirmation of its determination. Within ten business days of the contracting officer's receipt of the SBA's written confirmation (or within a period acceptable to VA and the SBA), the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will advise the SBA Central Office that VA intends to file a formal appeal.

(b) Within ten business days of the contracting officer's receipt of the SBA Central Office's written confirmation, the contracting officer will furnish an original and one copy of the appeal file to the Deputy Assistant Secretary for Acquisition and Materiel Management (95B). The file must contain a copy of the bid/offer from the firm considered nonresponsible, a copy of the bid/offer from the firm otherwise in line for award, a copy of the bid, a copy of the bid abstract, a copy of SBA's CoC Review Committee report, a copy of all correspondence with SBA on the matter, and the contracting officer's narrative statement establishing the error, omission, or other basis for disputing SBA's proposed responsibility determination.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will review the file prepared by the contracting officer. If the contracting officer's position is accepted, the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will transmit the formal appeal to the SBA Central Office within ten business days after notifying that office of VA's intent to appeal (or within a period acceptable to VA and the SBA). The contracting officer will be informed of the final SBA decision.

(d) If, after the Central Office review, it is decided that a formal appeal should not be made to the SBA, the contracting officer will be advised of this decision and that the CoC should be accepted by VA. The SBA Central Office will also be advised that VA will

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not pursue its formal appeal. If the decision concerns major construction projects and the Office of Facilities Management disagrees with the decision made by the Deputy Assistant Secretary for Acquisition and Materiel Management, the matter will be referred to the Senior Procurement Executive for a final VA determination.

[52 FR 46083, Dec. 4, 1987, as amended at 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

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

819.800 General.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Department of Veterans Affairs are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (00SB), shall be contracted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the Department of Veterans Affairs contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Department of Veterans Affairs, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between the Department of Veterans Affairs and SBA and will be administered by the Department of Veterans Affairs.

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(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.403-4 and 815.804-2 when negotiating contracts under the SBA 8(a) program. Contracting officers will request an audit in accordance with 815.805-5 on proposals in excess of \$500,000 before negotiating any contract or modification.

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989. Redesignated and amended at 63 FR 69220, Dec. 16, 1998]

819.803 Selecting acquisitions for the 8(a) program.

The contracting officer will specify in writing the time limit for SBA to propose an acceptable 8(a) subcontractor. The time limit should be between 30 and 45 days, but may be extended by the contracting officer.

[50 FR 793, Jan. 7, 1985]

819.804 Evaluation, offering, and acceptance.

(a) The contracting officer will notify SBA in writing of the time limit for contract negotiations in accordance with FAR 19.804-2. The time limit, as a minimum, should be 45 days, but may be extended by the contracting officer.

[50 FR 793, Jan. 7, 1985, as amended at 63 FR 69220, Dec. 16, 1998]

819.806 Pricing the 8(a) contract.

In order to expedite the 8(a) process, SBA should be informed as soon as a disparity between the 8(a) offered price and the estimated fair market price is determined. The SBA and the VA contracting office should collaborate to determine if the disparity is:

(a) A result of deficiencies in developing the fair market price, thereby requiring revision to the estimate;

(b) A result of overpricing by the 8(a) company, thereby requiring further efforts to negotiate a decrease in the offered price; or

(c) A legitimate differential which should be funded through the SBA business development expense.

[52 FR 37317, Oct. 6, 1987. Redesignated at 63 FR 69220, Dec. 16, 1998]

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819.806-4 Funding business development expense.

If SBA declines to fund the business development expense, it will be reported in accordance with 819.870.

[52 FR 37317, Oct. 6, 1987]

819.807 Estimating fair market price.

(a) Estimating the fair market price is a crucial initial step in determining what is a reasonable price for a negotiated 8(a) contract. For supplies and equipment, previous prices paid under competitive conditions, adjusted for inflation, may provide necessary data to make such an estimate.

(b) Estimating fair market price for such services as architect-engineer and construction may be accomplished through independent cost estimates and other pertinent data obtained from SBA when the estimated fair market price is not fully supportable from available documentation (see FAR 19.807).

[52 FR 37317, Oct. 6, 1987. Redesignated and amended at 63 FR 69220, Dec. 16, 1998]

819.807-70 Commitments of Office of Facilities Management funded projects for the 8(a) program.

Major and minor projects funded by the Office of Facilities Management (including those delegated to the VHA medical facilities) which have been committed to the 8(a) program will not be withdrawn from that program without the consent of the Office of Small and Disadvantaged Business Utilization (OSDBU). Requests for consent from OSDBU will normally be in writing and will clearly set forth the circumstances necessitating 8(a) withdrawal. If the contracting officer determines that time does not permit a written request, an oral request will be made. Such an oral request will be confirmed in writing.

[49 FR 12608, Mar. 29, 1984, as amended at 52 FR 46083, Dec. 4, 1987; 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

819.809-70 Procurement of supplies, services, and research and development.

(a) Contracts for supplies, equipment and services other than construction will be prepared as any other prime

contract and in accordance with FAR Subpart 19.8.

(b) The Department of Veterans Affairs contracting officer will forward the prime contract to SBA in sufficient numbers to furnish two copies to SBA and one copy to each subcontractor. SBA will return the signed original to the Department of Veterans Affairs contracting officer.

819.809-71 Procurement of construction.

Construction projects which have been selected for inclusion in this program will be contracted for as provided in this section and FAR Subpart 19.8.

(a) The contracting officer will submit, for each project so identified, the complete project listing including technical specifications, drawings and wage rates to the proper official of the appropriate SBA regional office. Should SBA select a competent subcontractor capable of performing the work, they will so certify to the Department of Veterans Affairs contracting officer. They will furnish him/her the name and complete address of the subcontractor(s), the project involved and the price(s) quoted. If the price quoted is within the range acceptable to the Department of Veterans Affairs, the contracting officer will indicate acceptance to SBA.

(b) When the contracting officer receives Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), signed by SBA and the subcontractor, and the performance and payment bonds, the contracting officer will forward a notice to proceed to the subcontractor.

Subpart 819.70—Veteran-Owned and Operated Small Businesses

SOURCE: 50 FR 793, Jan. 7, 1985, unless otherwise noted.

819.7001 Policy.

(a) Pub. L. 93-237 amended the Small Business Act by directing SBA to give "special consideration" to veterans of the Armed Forces in all SBA programs. Consistent with and in furtherance of that statute, it is the policy of the Department of Veterans Affairs to encourage participation by veteran-

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owned and operated small businesses, including Vietnam era and disabled, in VA acquisitions.

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

[50 FR 793, Jan. 7, 1985, as amended at 55 FR 49900, Dec. 3, 1990]

819.7002 Definition.

A veteran-owned small business is a small business that is at least 51 percent 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 purposes of this definition, eligible veterans include:

(a) Veterans who served in the U.S. Armed Forces and were 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 other than dishonorably.

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

[49 FR 12608, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989; 55 FR 49900, Dec. 3, 1990]

819.7003 Procedure.

(a) To obtain information on business development for veteran-owned businesses and further identify veteran-owned small businesses, contracting officers shall contact the veterans affairs officers at the local SBA district office. When counselling small businesses, contracting officers shall determine if the business is veteran-owned and operated and ensure that SF 129s are completed properly to identify veteran-owned business.

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(b) The veteran-owned business representation in 852.219-70 shall be included in all solicitations.

[55 FR 49901, Dec. 3, 1990]

819.7004 Waiver of the use of veteran-owned firms.

It is the policy of the Department of Veterans Affairs to provide veteran-owned firms every opportunity to participate in the acquisition process. A contracting office wishing to waive this policy for a particular procurement involving other than small purchase procedures must first process a VA Form 90-2268. The contracting officer must clearly document on VAF 90-2268 the reasons that eligible veteran-owned firms are not intended to be solicited or quotations sought for the particular procurement. Exempt from this reporting requirement are SBA 8(a) acquisitions.

[50 FR 793, Jan. 7, 1985, as amended at 52 FR 37317, Oct. 6, 1987; 52 FR 46083, Dec. 4, 1987; 54 FR 40064, Sept. 29, 1989; 55 FR 49901, Dec. 3, 1990; 63 FR 69220, Dec. 16, 1998]

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 822.3—Contract Work Hours and Safety Standards Act

Sec.

822.304 Variations, tolerances, and exemptions.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.478 Contract terminations.

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

SOURCE: 49 FR 12610, Mar. 29, 1984, unless otherwise noted.

Subpart 822.3—Contract Work Hours and Safety Standards Act

822.304 Variations, tolerances, and exemptions.

When a contract is entered into for nursing home care, the clause prescribed by FAR 22.305 will be modified to reflect the variation contained in 29 CFR 5.15(d)(3) as set forth in 852.222-70.

Subpart 822.4—Labor Standards for Contracts Involving Construction

822.478 Contract terminations.

(a) Prior to terminating any contract because of violations of the labor standards provisions of the contract, contracting officers, other than those in the Office of Facilities Management will, through the Deputy Assistant Secretary for Acquisition and Materiel Management, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management as to the recommended action to be taken.

(b) Prior to terminating a contract managed by the Office of Facilities Management for labor standards violation, the contracting officer will, through the Chief Facilities Management Officer, present the facts in detail to the General Counsel for review. The contracting officer will be advised by the Chief Facilities Management Officer, as to the recommended action.

(c) If the contract is to be terminated, the Deputy Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer will submit the reports required by 29 CFR 5.7(d).

[49 FR 12610, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 824.1—Protection of Individual Privacy

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824.102 General.

Subpart 824.2—Freedom of Information Act

824.202 Policy.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 824.1—Protection of Individual Privacy

824.102 General.

(a) The pertinent Department rules regarding the implementation of the Privacy Act of 1974 consist of 38 CFR 1.575 through 1.584.

[49 FR 12611, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

Subpart 824.2—Freedom of Information Act

824.202 Policy.

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

[49 FR 12611, Mar. 29, 1984; as amended at 54 FR 40064, Sept. 29, 1989]

PART 825—FOREIGN ACQUISITION

Subpart 825.1—Buy American Act—Supplies

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Subpart 825.2—Buy American Act—Construction Materials

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825.1001 Waiver of right to examination of records.

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Solicitation provisions and contract clauses.

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

SOURCE: 49 FR 12611, Mar. 29, 1984, unless otherwise noted.

Subpart 825.1—Buy American Act—Supplies

825.102 Policy.

825.102-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.108(b) will be prepared by the contracting officer for foreign construction materials costing less than \$1 million. Each determination will be factually supported in writing and included in the contract file.

(b) Nonavailability determinations for foreign materials costing over \$1 million must be requested by field facility contracting officers from the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Each request for a determination must be fully justified with all pertinent facts.

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) concurrently with the submissions required by FAR 25.108 (b) and (c).

[49 FR 12611, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

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825.105 Evaluating offers.

When a determination is required under FAR 25.105, the contracting officer will submit the proposed award to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for approval by the Secretary. The submission will contain all the facts, including a comparison of all the bids or offers received, and any other pertinent information upon which a determination may be made. If approved, a report of the transaction will be prepared and submitted by the Deputy Assistant Secretary for Acquisition and Materiel Management in accordance with Executive Order 10582, dated December 17, 1954, as amended.

[49 FR 12611, Mar. 29, 1984, as amended at 63 FR 69220, Dec. 16, 1998]

825.108 Excepted articles, materials and supplies.

The following items are added to the list of exceptions contained in FAR 25.108(d):

Glass, Wire
Glass, Lead
Insulin, Human.

[52 FR 32012, Aug. 25, 1987]

Subpart 825.2—Buy American Act—Construction Materials

825.202 Policy.

825.202-70 Nonavailability in the United States.

(a) If articles, materials, and supplies required for a particular procurement are not excepted in FAR 25.108, or when only foreign bids or offers are received, the determination concerning nonavailability required by FAR 25.202(a)(3) will be made by the contracting officer for foreign construction material costing \$100,000 or less. Each determination will be factually supported in writing and included in the contract file.

(b) Field facility contracting officers must request approval of nonavailability determinations from the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

(c) A copy of all determinations made in accordance with paragraph (a) of this section shall be forwarded to the

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825.603-70

Chief Facilities Management Officer, Office of Facilities Management, through the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

(d) Each solicitation will include the clause specified in 852.236-89. This provision reflects the general policy of not authorizing nondomestic materials on VA construction contracts.

[49 FR 12611, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 52 FR 32012, Aug. 25, 1987; 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

825.203 Evaluating offers.

When a contracting officer believes that the requirement of the "Buy American Act" is impracticable as provided in FAR 25.202(a)(2), or that it would be advantageous to VA to deviate from the provisions of the Act as authorized by FAR 25.203, authority to consummate the contract will be requested. The request containing all the facts, including a comparison of all the bids or offers received and any other pertinent information upon which a determination may be made, will be submitted through the Deputy Assistant Secretary for Acquisition and Materiel Management (95), for approval by the Secretary. If approved, a report of the transaction will be prepared and transmitted by the Chief Facilities Management Officer, Office of Facilities Management, in accordance with Executive Order 10582, dated December 17, 1954, as amended.

[49 FR 12611, Mar. 29, 1984, as amended at 52 FR 32012, Aug. 25, 1987; 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

Subpart 825.3—Balance of Payments Program

825.302 Policy.

825.302-70 Deviations from the Balance of Payments Program.

When a contracting officer believes that the requirement of the "Balance of Payments Program" is not practicable as set forth in FAR 25.302 (b)(2) or (b)(3), he/she will request authority to consummate the contract through the Deputy Assistant Secretary for Ac-

quisition and Materiel Management (95) for approval. Each request must be fully justified, containing all pertinent facts.

[49 FR 12611, Mar. 29, 1984, as amended at 63 FR 69220, Dec. 16, 1998]

825.304 Excess and near-excess foreign currencies.

825.304-70 Determination of feasibility to use excess or near-excess foreign currency.

In accordance with FAR 25.304(c), contracting officers will submit requests for determination to utilize excess or near-excess foreign currencies to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

Subpart 825.6—Customs and Duties

825.603 Procedures.

825.603-70 Technical assistance.

Should the regulations contained in FAR 25.6 be inadequate to meet particular needs of a contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the nearest Regional Office of the United States Customs Service should be contacted for technical assistance. These offices are located as follows:

Regional Commissioner, U.S. Customs Service, 100 Summer St., Boston, Massachusetts 02110

Regional Commissioner, U.S. Customs Service, 99 S.E. 5th St., Miami, Florida 33131

Regional Commissioner, U.S. Customs Service, 585 Felipe St., Houston, Texas 77057

Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048

Regional Commissioner, U.S. Customs Service, 423 Canal St., New Orleans, Louisiana 70130

Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles St., Los Angeles, California 90053

Regional Commissioner, U.S. Customs Service, 55 E. Monroe St., Chicago, Illinois 60603

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.703 Exceptions.

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of \$10,000 from the Secretary through the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Each such request must be fully justified, containing all pertinent facts.

[49 FR 12611, Mar. 29, 1984, as amended at 63 FR 69220, Dec. 16, 1998]

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance

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

[49 FR 12611, Mar. 29, 1984, as amended at 63 FR 69220, Dec. 16, 1998]

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

(a) If the contracting officer determines that the “Audit and Records—Negotiation” clause with Alternate III should be used after all efforts to include the basic clause have failed, and provided that use of Alternate III of the clause is authorized in the instances cited in FAR 25.901, he/she may request, with appropriate documentation, a determination from the Secretary, through the Deputy Assistant Secretary for Acquisition and Materiel Management (95). The Secretary, should he/she concur in the contracting officer’s determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller General for a final determination as required by FAR 25.901(c)(1).

(b) All determinations to omit the “Audit and Records—Negotiation” clause will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.901(d). The completed determination and findings will be made a part of the contract file. One copy of the determination and findings will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

[49 FR 12611, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989. Redesignated and amended at 63 FR 69220, Dec. 16, 1998. Further redesignated at 67 FR 49258, July 30, 2002]

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Solicitation provisions and contract clauses.

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

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

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

[67 FR 49258, July 30, 2002]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds and Other Financial Protections

Sec.

- 828.101 Bid guarantees.
- 828.101-2 Contract clause.
- 828.101-70 Safekeeping and return of bid guarantee.
- 828.106 Administration.
- 828.106-6 Furnishing information.
- 828.106-70 Bond premium adjustment.

Subpart 828.2—Sureties and Other Security for Bonds

- 828.203-7 Exclusion of individual sureties.

Subpart 828.3—Insurance

- 828.306 Insurance under fixed-price contracts.

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

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

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

SOURCE: 49 FR 12612, Mar. 29, 1984, unless otherwise noted.

Subpart 828.1—Bonds and Other Financial Protections

828.101 Bid guarantees.

828.101-2 Contract clause.

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

[49 FR 12612, Mar. 29, 1984. Redesignated at 64 FR 40519, July 27, 1999.]

828.101-70 Safekeeping and return of bid guarantee.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable

bids will be retained in a safe. These will be returned by any method that will provide evidence of receipt, or in person upon presentation of proper receipt, after the contract and contract bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of other than the three lowest acceptable bids should be returned promptly to the respective bidders by any method that will provide evidence of receipt or in person upon presentation of proper receipt.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until the contract and contract bonds have been executed by the successful bidder, or all bids have been rejected.

[49 FR 12612, Mar. 29, 1984, as amended at 64 FR 40519, July 27, 1999]

828.106 Administration.

828.106-6 Furnishing information.

For all contracts except contracts awarded by the Office of Facilities Management, the head of the contracting activity, as defined in 802.100, shall be the Department designee referenced in FAR 28.106-6(c) to furnish copies of payment bonds to requestors. For contracts awarded by the Office of Facilities Management, the Office of Facilities Management contracting officer shall be the Department designee.

[64 FR 40519, July 27, 1999]

828.106-70 Bond premium adjustment.

When performance and payment bonds are required, the contract will contain the clause prescribed in 852.228-70.

[49 FR 12612, Mar. 29, 1984. Redesignated at 64 FR 40519, July 27, 1999]

Subpart 828.2—Sureties and Other Security for Bonds

SOURCE: 64 FR 40519, July 27, 1999, unless otherwise noted.

828.203-7 Exclusion of individual sureties.

The Deputy Assistant Secretary for Acquisition and Materiel Management is delegated authority to make the determinations referenced in FAR 28.203-7 to exclude individuals from acting as surety on bonds and to accept bonds from individuals named on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Subpart 828.3—Insurance**828.306 Insurance under fixed-price contracts.**

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, will contain the provision in 852.237-71.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, part II, chapter 3; or other emergency or sporadic vehicle or aircraft services. *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 12612, Mar. 29, 1984, as amended at 64 FR 40519, July 27, 1999]

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts**828.7100 Scope of subpart.**

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

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

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract containing

an indemnification provision pursuant to 38 U.S.C. 7317.

[49 FR 12612, Mar. 29, 1984, as amended at 63 FR 69221, Dec. 16, 1998; 64 FR 40519, July 27, 1999]

828.7101 General.

(a) The approval for the indemnification of contractors will be made by the Secretary of Veterans Affairs.

(b) Contracting Officers shall submit requests for approval, together with all available information, to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for transmittal to the Secretary.

[49 FR 12612, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989; 54 FR 30044, July 18, 1989; 63 FR 69221, Dec. 16, 1998]

828.7102 Extent of indemnification.

(a) Any contract for medical research or development authorized by 38 U.S.C. 7303, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under 828.7103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal worker's injury compensation laws to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart must also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) Control of or assistance in the defense by the Government, at its election, of such suit or claim for which indemnification is provided in the contract.

[49 FR 12612, Mar. 29, 1984, as amended at 63 FR 69221, Dec. 16, 1998]

828.7103 Financial protection.

(a) The amount of financial protection that the contractor is required to have and maintain to cover liability to third persons and loss of or damage to the contractor's property shall be the maximum amount of insurance available from private sources; however, the Secretary may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self insurance, proof of such financial responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

[49 FR 12612, Mar. 29, 1984, as amended at 64 FR 40519, July 27, 1999]

PART 829—TAXES

Sec.

829.000 Scope of part.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202-70 Tax exemptions for alcohol products.

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

SOURCE: 49 FR 12614, Mar. 29, 1984, unless otherwise noted.

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on alcohol products purchased for use in the Department of Veterans Affairs medical care program.

[64 FR 38593, July 19, 1999]

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202-70 Tax exemptions for alcohol products.

(a) *General.* (1) The procurement of spirits free of tax for nonbeverage purposes is permitted to Government agencies by regulations of the Bureau of Alcohol, Tobacco, and Firearms (ATF) (see 27 CFR 211.231-237, 213.141-146 and 240.720-722). The use of tax-free alcohol, whiskey, beer, wine and denatured spirits for nonbeverage purposes shall include but not be limited to medicinal and scientific purposes and in the treatment of patients.

(2) Authority is hereby delegated to the Director, Marketing Center, Hines, Illinois, and to the Chief, Acquisition and Materiel Management Service, Department of Veterans Affairs medical facilities to sign application permits on Bureau of Alcohol, Tobacco, and Firearms (ATF) prescribed forms. This authority is not to be redelegated.

(b) *Whiskey, alcohol, and denatured alcohol.* (1) Application forms for tax-free purchases are to be obtained from and submitted to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226.

(2) ATF Form 1486, Specially Denatured Spirits for Use of United States, is the application/permit required for denatured spirits, and ATF Form 1444, Tax-Free Spirits for Use of United States, is required for distilled spirits (whiskey and alcohol). These are continuing permits to procure items tax free. Copies must be made available to the supplier in support of each procurement.

(3) Purchases for excise tax-free whiskey and alcohol, not available through the depot can only be made from a distillery or a bonded premises. In accordance with 27 CFR 213.144, the vendor will also support each shipment with ATF 1473, Shipment and Receipt Specifically Denatured Tax-Free, or Recovered Spirits. The ATF 1473 will be completed by the accountable officer and the original copy will be forwarded to the Regional Regulatory Administrator whose address is shown in item

12 of the form. A copy of ATF 1473 will be retained in the purchase order file.

(c) *Wine*. No tax exemption form or ATF permit is required for the tax-free procurement of wine. An extra copy of a properly executed purchase order or requisition document may be furnished to the supplier (retailer, wholesaler or winery) to facilitate record keeping.

(d) *Beer*. Tax-free beer may be procured only from licensed breweries and only when such product is prescribed for therapeutic use of patients. The application for an ATF permit is to be submitted in letter form to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226. The following information is required.

- (1) Name and address of facility;
- (2) Specific purpose for which beer will be used;
- (3) Quantity proposed to buy each month, year, etc.;
- (4) Name and address of brewery; and
- (5) Copy of document authorizing contracting officer to sign request.

A new permit is needed only when beer is to be purchased from a different brewery than the one for which the original permit was requested.

[49 FR 12614, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989]

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures

Sec.

- 831.7000 Scope of subpart.
- 831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.
- 831.7001-1 Tuition.
- 831.7001-2 Special services or courses.
- 831.7001-3 Books, supplies and equipment required to be personally owned.
- 831.7001-4 Medical services and hospital care.
- 831.7001-5 Secretary's Decision No. 557.
- 831.7001-6 Consumable instructional supplies.
- 831.7001-7 Reimbursement for other supplies and services.

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

SOURCE: 49 FR 12615, Mar. 29, 1984, unless otherwise noted.

Subpart 831.70—Contract Cost Principles and Procedures

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts pertaining to the furnishing of vocational rehabilitation, education, and training to eligible veterans under chapter 31 of Title 38, United States Code.

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

831.7001-1 Tuition.

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

(b) VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other training on-the-job. VA may pay:

(1) For such charges customarily made by nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans even though an incentive wage is paid the trainee as part of the training; or

(2) For certain training expenses incurred by an employer providing on-the-job training following rehabilitation to the point of employability when such additional training is determined to be necessary by VA.

(c) When the total cost of instruction is paid from Federal funds or a portion of the cost is covered by grants from the Federal Government, i.e., Smith-Hughes or other laws, excluding Federal Land Grant Funds, such subsidy

will be taken into consideration in determining the charge to the Department of Veterans Affairs. The term, Federal Land Grant Funds, refers to those received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) Payments on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of tuition or fees or both will be made in accordance with the following:

(1) The award will reduce, to the extent of the award, the amount of tuition or fee or both that is payable by the Department of Veterans Affairs.

(2) Awards which are not paid in cash, except those which are made specifically for the purpose of defraying the cost of room and board in dormitories which will be disregarded, will reduce to the extent of the award the charges for which the Department of Veterans Affairs is responsible.

(3) Cash awards may be retained by the veterans and will not be deducted from charges ordinarily paid by the Department of Veterans Affairs.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized to reduce the charges payable by Department of Veterans Affairs in accordance with such waivers.

(e) Enrollment fees in an amount sufficient to cover the cost of registration may be paid, provided the institution or training establishment usually makes such a charge, and it does not exceed that charge made to other students or trainees.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-2 Special services or courses.

Special services or courses are those services requested by the Department of Veterans Affairs which are over and above those customarily required by the institution for similarly circumstanced nonveterans and are considered by the contracting officer to be necessary for the rehabilitation of the trainee. The costs of such special services or courses will be negotiated

prior to being requested by the Department of Veterans Affairs.

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

(a) Reimbursement for books, supplies, or equipment and referred to as supplies, will be made as provided in this section.

(1) Reimbursement will be made for those supplies customarily required to be owned personally by all students taking the same course or courses except that reimbursement may be made for items which are not specifically required by the school for pursuit of the course, but are determined to be needed by VA because of the demands of the course, general possession by other students, and the disadvantage imposed on the veterans by not having the item. In no instance will the supplies be in a greater variety, quality, or amount than required of nonveteran students. In this instance required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) When supplies are available in several prices, grades, or qualities, reimbursement may be made only for such quality or grade that will meet the requirements.

(3) Partial payment agreements in which the Department of Veterans Affairs shares payment with the veterans is not allowable.

(4) The costs incurred by the institution in connection with the veteran's thesis such as typing, printing, microfilming, or otherwise reproducing the required number of copies; research expenses when certified by the veterans committee chairman, major professor, department head, or appropriate dean that such expenses are required in order to complete the course requiring the preparation of a thesis are considered as supplies and are authorized for reimbursement.

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

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(6) Where the institution, training establishment, or employer arranges for issuance of supplies to all students by stores or establishments not institutionally owned and to pay such store or establishment for supplies issued to trainees, reimbursement is allowable provided the charges are no greater than those paid by nonveterans or to the institutions whichever is the lesser.

(7) Supplies purchased by the institution specifically for trainees will be reimbursed at the net cost to the institution.

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

(9) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject on a rental basis (commonly referred to as a rental set) and the ownership or permanent possession by the student is not required, reimbursement is authorized for the rental charge provided it does not exceed the charge made to nonveteran students.

(10) Educational and training institutions furnishing supplies to trainees which are required to be owned personally or on a rental basis by all students pursuing the same or similar course may be compensated for such services in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented except:

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

(ii) The handling charge is not allowable for Government-owned books procured by the institution from the Library of Congress.

(iii) In cases where an item of equipment will exceed \$50 in cost, effort will be made to secure a lower handling charge than for those costing a lesser

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amount. The agreed percent for such handling charges will be included in the contract or added as an addendum.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-4 Medical services and hospital care.

(a) VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans payment, payment may be made if it is determined by the Veterans Health Administration that such payment is in the best interest of the veteran and the government.

(b) Where medical services or hospital care not covered by the customary students health fee are available in the school operated facilities or arrangements have been made by the institution with doctors and hospitals in the immediate area, reimbursement by the Veterans Benefits Administration for such services may be made in a contract for such services provided that the Director, VA Medical Center, determines:

(1) That such arrangements are necessary to provide timely medical care for veterans attending the facility under provisions of Chapter 31; and

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

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

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989; 63 FR 69221, Dec. 16, 1998]

831.7001-5 Secretary's Decision No. 557.

(a) Fees and expenses authorized under Secretary's Decision No. 557 may be authorized for payment when the educational institution or training establishment makes such payments on behalf of the veteran.

(b) Payment for fees and expenses not made by the educational institution or training establishment will be made in

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accordance with the applicable provisions of parts 812, 813 or 815 of this chapter and FAR parts 12, 13, or 15.

[49 FR 12615, Mar. 29, 1984, as amended at 63 FR 69221, Dec. 16, 1998]

831.7001-6 Consumable instructional supplies.

(a) Reimbursement for consumable instructional supplies which institutions require for the instruction of all students, veteran or nonveteran pursuing the same or comparable course or courses will be made when:

(1) The supplies are entirely consumed in the fabrication of a required project.

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse for further instructions by disassembling or dismantling the end product.

(b) Reimbursement for consumable instructional supplies is not allowable when:

(1) The supplies can be salvaged for reuse.

(2) The supplies used in a project which has been elected by the student as an alternate class project in order to produce an end product of greater value than that which is normally required to learn the skills of the occupation and which will become his property upon completion.

(3) The supplies used in a project which has been selected by the institution to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the veteran to elect a particular course of study.

(4) The salable value of the end product is equal to or greater than the cost of the supplies used in its fabrication or assembly and a reasonable use has not been made of such supplies so that they are not readily salvaged from the end product to be reused for instructional purposes.

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

(6) A third party provides the articles or equipment for repair or improvement and for which he or she would otherwise pay a commercial price.

(7) The number of projects resulting in end products in excess of the num-

bers normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies are included in the charge for tuition or as a fee designated for such purpose.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-7 Reimbursement for other supplies and services.

Reimbursement shall be made for other services and assistance which may be authorized under provisions of applicable Chapter 31 regulations including but not limited to employment and self-employment, initial and extended evaluation, and independent living services.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

PART 832—CONTRACT FINANCING

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

Subpart 832.4—Advance Payments

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832.402 General.
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Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.
832.502-2 Contract finance office clearance.

Subpart 832.8—Assignment of Claims

832.805 Procedure.
832.805-70 Distribution/notification of assignment of claims.

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

SOURCE: 49 FR 12616, Mar. 29, 1984, unless otherwise noted.

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

(a) In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under

832.402

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

(b) In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled "Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236-83, Payments under fixed-price construction contracts (including NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

[67 FR 49258, July 30, 2002]

Subpart 832.4—Advance Payments

832.402 General.

The determination required by FAR 32.402(c)(1)(iii) will be made by the Deputy Assistant Secretary for Acquisition and Materiel Management. Prior to award, contracting officers will submit, through channels, the information required by FAR 32.409-1 for such determinations.

832.404 Exclusions.

(a) Under the provisions of 31 U.S.C. 3324(d)(2), as amended, advance payment is authorized for subscriptions or other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefore, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

(b) Under the provisions of 31 U.S.C. 1535, advance payment may be made for services and supplies obtained from another Government agency. This in-

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cludes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, and from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502-2 Contract finance office clearance.

Prior approval of actions listed in FAR 32.502-2 will be obtained from the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Requests for approval shall be accompanied by full justification together with the recommendations of the contracting officer.

[49 FR 12616, Mar. 29, 1984, as amended at 63 FR 69221, Dec. 16, 1998]

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805-70 Distribution/notification of assignment of claims.

(a) The Contracting officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the General Accounting Office copy of the contract.

(b) Contracting officers will notify field facilities of any recognized assignment of payments under contracts executed in Central Office or by the VA National Acquisition Center divisions in all cases where payment for articles and services under such contracts are

certified and approved for payment in the field.

[49 FR 12616, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989; 63 FR 69221, Dec. 16, 1998]

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—Protests

- Sec.
- 833.102 General.
- 833.103 Protests to the Department.
- 833.104 Protests to GAO.
- 833.106 Solicitation provision.

Subpart 833.2—Disputes and Appeals

- 833.209 Suspected fraudulent claims.
- 833.211 Contracting officer's decision.
- 833.212 Contracting officer's duties upon appeal.
- 833.214 Alternative dispute resolution (ADR).

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

Subpart 833.1—Protests

833.102 General.

Solicitations shall instruct interested parties (see FAR provision 52.233-2) to deliver a copy of any protest filed with the General Accounting Office (GAO) to the contracting officer and the appropriate Central Office activity as follows:

- (a) For contracts to be awarded by the Office of Facilities Management: Chief Facilities Management Officer, Office of Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.
- (b) For all other contracts: Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

[51 FR 23070, June 25, 1986, as amended at 52 FR 28559, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996; 63 FR 15318, Mar. 31, 1998]

833.103 Protests to the Department.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer or, as an alternative, may re-

quest an independent review by filing a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management. A protest filed with the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(2) Protests must be in writing and addressed as follows:

- (i) Contracting officer protests—address where offer/bid is to be submitted;
- (ii) Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or
- (iii) Chief Facilities Management Officer, Office of Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) Protests regarding certain issues may be dismissed by VA without consideration of the merits or forwarded to another agency for appropriate action. Among these protests are the following:

- (i) *Contract administration.* The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the Department are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978, 41 U.S.C. 601-613.
- (ii) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6); 13 CFR 121.3-6 (1984).
- (iii) *Small business certificate of competency program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small

Business Act, or any issuance of a certificate of competency or refusal to issue a certificate under such section is not reviewed in accordance with bid protest procedures absent a showing of possible fraud or bad faith on the part of Government officials.

(iv) *Protests under section 8(a) of the Small Business Act.* Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(v) *Affirmative determination of responsibility by the Contracting Officer.* Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible to reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(vi) *Walsh-Healey Public Contract Act.* Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business Administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35-45.

(vii) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where the subcontract is by or for the Government.

(viii) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(b) Where appropriate, alternative dispute resolution (ADR) procedures may be used to resolve protests at any stage in the protest process. The De-

partment of Veterans Affairs Board of Contract Appeals (VABCA) is an independent and neutral entity within the Department of Veterans Affairs and is available to serve as the third-party neutral (Neutral) for bid protests. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(c) *Action upon receipt of protest.* For protests filed with the contracting officer, the head of the contracting activity (HCA) shall be the approving official for the determinations identified in FAR 33.103(f)(1) and (f)(3). If the HCA is also the contracting officer, the approving official shall be the Deputy Assistant Secretary for Acquisition and Materiel Management. For protests filed with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, those individuals shall be the approving officials for the determinations identified in FAR 33.103(f)(1) and (f)(3).

(d) *Requests for GAO advance decisions.* When a written protest has been filed with the contracting officer and the contracting officer considers it desirable to do so, the contracting officer may request an advance decision from the Comptroller General. The submission to the Comptroller General will be sent through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, and will include the material indicated in FAR 33.104(a)(2). The contracting officer shall notify the protesting individual or firm promptly in writing of the decision of the Comptroller General.

(e) *Protest after award.* When a written protest is filed with the contracting officer after contract award:

(1) If FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer shall seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis and, if successful, shall document the suspension with a supplemental

agreement. If unsuccessful, the contracting officer shall issue a stop-work order in accordance with contract clause FAR 52.233-3, Protest After Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer shall furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer shall advise the protester that the protester may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, or the Comptroller General, as specified in internal Department guidance.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer may consult with the Office of the General Counsel (025) and shall advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer shall submit the case promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, who may consult with the Office of the General Counsel (025) and who shall either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for a decision. The contracting officer shall provide interested parties with a copy of the final decision.

(f) *Agency appellate review of contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued

by the Office of Facilities Management, with the Chief Facilities Management Officer, Office of Facilities Management. To be considered timely, the appeal must be received by the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, by the Chief Facilities Management Officer, Office of Facilities Management, within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals shall be addressed as provided in paragraphs (a)(2)(i) or (iii) of this section. Appeals shall not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided herein, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (025).

[51 FR 23070, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996; 61 FR 20492, May 7, 1996; 63 FR 15318, 15319, Mar. 31, 1998]

833.104 Protests to GAO.

(a) *General.* (1) When a protest before or after award has been lodged with the General Accounting Office (GAO), the contracting officer will prepare a report to be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, within 5 workdays after receipt of verbal notice of the protest or receipt of a copy of the protest, whichever occurs first, for preparation of the Department report. The report should include a copy of the documentation indicated in FAR 33.104(a)(3)(ii).

(2) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(2).

(b) *Protests before award.* When the Department has received notice from the GAO of a preaward protest filed directly with GAO, award shall not be

made until the matter is resolved, unless the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, approves the head of contracting activity findings required by FAR 33.104(b)(1) and GAO has been notified pursuant to FAR 33.104(b)(2).

(c) *Protests after award.* Protests after award shall be handled in a manner consistent with procedures identified for protests before award. Although persons involved or affected by the filing of a protest may be limited, at least the contractor shall be furnished the notice of the protest and its basis by the contracting officer. When VA receives from GAO, *within ten calendar days after award*, a notice of protest filed directly with GAO, and it is determined by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service (or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate), and the GAO must be notified as required by FAR 33.104(c)(3).

[51 FR 23070, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

833.106 Solicitation provision.

(a) The contracting officer shall insert the provision at 852.233-70, Protest Content, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233-71, Alternate Protest Procedure, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

[63 FR 15319, Mar. 31, 1998]

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

[51 FR 23070, June 25, 1986]

833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d) of this section, the decision shall, in addition to the material required by FAR 33.211(a)(4), contain the following:

The Department of Veterans Affairs Board of Contract Appeals (VABCA) is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the VABCA are published in section 1.783, of Title 38, Code of Federal Regulations. The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

[51 FR 23070, June 25, 1986, as amended at 52 FR 28561, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 61 FR 20492, May 7, 1996]

Department of Veterans Affairs

833.214

833.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days, will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Department of Veterans Affairs Board of Contract Appeals (VABCA). Copies of the notice of appeal and the final decision letter will be transmitted concurrently to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service and the Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Facilities Management, copies of appeal and final decision letter need not be transmitted to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service.)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VABCA, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VABCA; and

(5) Any additional information considered pertinent.

[51 FR 23070, June 25, 1986; 51 FR 44179, Dec. 8, 1986; 61 FR 11586, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

833.214 Alternative dispute resolution (ADR).

(a) Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures to resolve contract disputes before they become appealable disputes by using the Department of Veterans Affairs' ADR Program.

(b) Under the Department's ADR Program, the Department of Veterans Affairs Board of Contract Appeals (VABCA or Board) Chair, who is the Department's Dispute Resolution Specialist, will appoint a Board member or hearing examiner (at no cost to either party) to serve as a Neutral to aid in resolving matters before they become appealable disputes. The administrative judges and hearing examiners are trained Neutrals and are available to assist in ADR proceedings.

(c) Under the ADR Program, the parties are able to select the ADR process they believe will help resolve the matter. Everything discussed during the ADR meeting is confidential. In the event a Board member serves as a Neutral in a matter that is not resolved using ADR, that Board member shall keep all discussions confidential and shall have no further input or contact with the parties or other Board members in subsequent Board activities (ref. the Administrative Dispute Resolution Act, 5 U.S.C. 571-583; and, Federal Acquisition Regulation, Subpart 33.2).

(d) The Department of Veterans Affairs and contractors are also encouraged to use ADR in disputes appealed to the VABCA.

[63 FR 15319, Mar. 31, 1998]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SOURCE: 49 FR 12618, Mar. 29, 1984, unless otherwise noted.

Subpart 836.2—Special Aspects of Contracting for Construction

- Sec.
- 836.202 Specifications.
- 836.203 Government estimate of construction costs.
- 836.204 Disclosure of the magnitude of construction projects.
- 836.206 Liquidated damages.
- 836.209 Construction contracts with architect-engineer firms.
- 836.213-4 Notice of award.
- 836.213-70 Notice to proceed.

Subpart 836.5—Contract Clauses

- 836.500 Scope of subpart.
- 836.501 Performance of work by the contractor.
- 836.513 Accident prevention.
- 836.521 Specifications and drawings for construction.
- 836.570 Correspondence.
- 836.571 Reference to “standards.”
- 836.572 Government supervision.
- 836.573 Daily report of workers and materials.
- 836.574 Subcontractors and work coordination.
- 836.575 Schedule of work progress.
- 836.576 Supplementary labor standards provisions.
- 836.577 Worker’s compensation.
- 836.578 Contract changes—supplement.
- 836.579 Special notes.

Subpart 836.6—Architect-Engineer Services

- 836.602 Selection of firms for architect-engineer contracts.
- 836.602-1 Selection criteria.
- 836.602-2 Evaluation boards.
- 836.602-4 Selection authority.
- 836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.
- 836.603 Collecting data on and appraising firms’ qualifications.
- 836.606 Collecting data on and appraising firms’ qualifications.
- 836.606-70 General.
- 836.606-71 Architect-engineer’s proposal.
- 836.606-72 Contract price.
- 836.606-73 Application of 6-percent architect-engineer fee limitation.

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

Subpart 836.2—Special Aspects of Contracting for Construction

836.202 Specifications.

(a) The procedures described in part 811 shall be applicable to construction specifications.

(b) The use of “brand name or equal” or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform the prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If it is determined that only one product will meet the Government’s minimum needs and VA will not allow the submission of “equal” products, the bidders must be placed on notice that the “brand name or equal” provisions of the “Material and Workmanship” clause found at FAR 52.236.5, and any other provision which may authorize the submission of an “equal” product, will not apply. In order to properly alert bidders to this requirement, the contracting officer shall include the clause found at 852.236-90, “Restriction on Submission and Use of Equal Products,” in the solicitation.

[52 FR 282, Jan. 5, 1987, as amended at 53 FR 7756, Mar. 10, 1988; 53 FR 9631, Mar. 24, 1988; 54 FR 40065, Sept. 29, 1989; 61 FR 20492, May 7, 1996; 63 FR 17338, Apr. 9, 1998; 67 FR 49258, July 30, 2002]

836.203 Government estimate of construction costs.

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

[67 FR 49258, July 30, 2002]

836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000;
- (b) Between \$25,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;
- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$2,000,000;
- (g) Between \$2,000,000 and \$5,000,000;
- (h) Between \$5,000,000 and \$10,000,000;
- (i) Between \$10,000,000 and \$20,000,000;
- (j) Between \$20,000,000 and \$50,000,000;
- (k) Between \$50,000,000 and \$100,000,000;
- (l) More than \$100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR Subpart 1.4.)

[53 FR 1631, Jan. 21, 1988]

836.206 Liquidated damages.

Liquidated damage provisions may be included in construction contracts when the criteria of 811.502 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.211-78 will be included in addition to the clause set forth in FAR 52.211-12.

[49 FR 12618, Mar. 29, 1984, as amended at 63 FR 17338, Apr. 9, 1998]

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or, for National Cemetery Administration contracts, the Director, Office of Construction Management, for contracts involving nonrecurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does

not apply to design-build contracts, as defined at FAR 36.102.

[67 FR 49258, July 30, 2002]

836.213-4 Notice of award.

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

[67 FR 49259, July 30, 2002]

836.213-70 Notice to proceed.

(a) Construction contractors will be given a written "Notice to Proceed" with the work. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work will be completed within ____ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery

836.500

service will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

[49 FR 12618, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 11587, Mar. 21, 1996; 61 FR 20492, May 7, 1996. Redesignated and amended at 67 FR 49259, July 30, 2002]

Subpart 836.5—Contract Clauses

836.500 Scope of subpart.

(a) The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in subpart 801.4.

(c) Clauses and provisions inconsistent with those contained in FAR Subpart 36.5 and 52.2 and this subpart, but considered essential to the procurement of Department of Veterans Affairs requirements, shall not be used unless the deviation procedure set forth in subpart 801.4 has been complied with.

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 796, Jan. 7, 1985. Redesignated and amended at 67 FR 49260, July 30, 2002]

836.501 Performance of work by the contractor.

The contracting officer shall insert the clause at 852.236-72, Performance of work by the contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236-1, Performance of Work by the Contractor. When the solicitations and contracts include a section entitled “Network Analysis System (NAS),” the contracting officer shall use the clause with its Alternate I.

[67 FR 49259, July 30, 2002]

836.513 Accident prevention.

The contracting officer shall insert the clause at 852.236-87, Accident Pre-

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vention, in all solicitations that contain the clause at FAR 52.236-13, Accident prevention, or its Alternate.

[58 FR 48974, Sept. 21, 1993; 58 FR 58730, Nov. 3, 1993]

836.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 852.236-71, Specifications and drawings for construction, in solicitations and contracts for construction that contain the FAR clause at 52.236-21, Specifications and Drawings for Construction.

[67 FR 49259, July 30, 2002]

836.570 Correspondence.

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

[67 FR 49259, July 30, 2002]

836.571 Reference to “standards.”

The contracting officer shall insert the clause at 852.236-77, Reference to “standards,” in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

[67 FR 49259, July 30, 2002]

836.572 Government supervision.

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

[67 FR 49259, July 30, 2002]

836.573 Daily report of workers and materials.

The contracting officer shall insert the clause at 852.236-79, Daily report of workers and materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

[67 FR 49259, July 30, 2002]

836.574 Subcontractors and work coordination.

The contracting officer shall insert the clause at 852.236-80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

[67 FR 49259, July 30, 2002]

836.575 Schedule of work progress.

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

[67 FR 49259, July 30, 2002]

836.576 Supplementary labor standards provisions.

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

[67 FR 49259, July 30, 2002]

836.577 Worker's compensation.

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

[67 FR 49259, July 30, 2002]

836.578 Contract changes—supplement.

(a) The contracting officer shall insert the clause at 852.236-88, Contract changes—supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) When negotiated changes exceed \$500,000, paragraph (a) of the clause at 852.236-88 will apply. Because paragraph (a) does not provide ceiling rates

for indirect expenses, the contractor must supply cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404-2. When the negotiated change will be \$500,000 or less, paragraph (b) of the clause at 852.236-88 will apply.

(c) As provided in FAR 15.403-4, proposals exceeding the cost or pricing data threshold shall be accompanied by certificates of current cost or pricing data. The contracting officer, if authorized by the head of the contracting activity, may require the submission of cost or pricing data for proposals valued at less than the cost or pricing data threshold specified in FAR 15.403-4(a)(1) and may require that the data be certified in accordance with FAR 15.403-4(a)(2).

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

[67 FR 49259, July 30, 2002]

836.579 Special notes.

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

[67 FR 49259, July 30, 2002]

Subpart 836.6—Architect-Engineer Services

836.602 Selection of firms for architect-engineer contracts.

836.602-1 Selection criteria.

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the

preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Specific experience and qualifications of personnel proposed for assignment to the project and their record of working together as a team.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996; 67 FR 49259, July 30, 2002]

836.602-2 Evaluation boards.

Central Office architect-engineer contractors will be selected by the board appointed by the Chief Facilities Management Officer, Office of Facilities Management. Field facility architect-engineer contractors will be selected by the board appointed by the facility director.

(a) The evaluation board for the Office of Facilities Management will be chaired by the Director, A/E Evaluation and Program Support Service. The Project Director or Project Manager will be designated to act as Chair when necessary. The board's members, as appointed by the Chief Facilities Management Officer, Office of Facilities Management, will include the appropriate Project Manager and as many qualified professional architects or engineers from the Office of Facilities Management technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities Management or from other VA administrations and staff offices will be designated for projects when appropriate.

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the head of the contracting activity (HCA) (or the senior contracting officer at the facility if there is no HCA on site) and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chair-

person of the board will be the senior engineer.

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

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998; 67 FR 49260, July 30, 2002]

836.602-4 Selection authority.

The Chief Facilities Management Officer, Office of Facilities Management (for Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and the facility director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 61 FR 11587, Mar. 21, 1996; 67 FR 49260, July 30, 2002]

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

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

[67 FR 49260, July 30, 2002]

836.603 Collecting data on and appraising firms' qualifications.

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

67 FR 49260, July 30, 2002]

836.606 Negotiations.**836.606-70 General.**

To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

836.606-71 Architect-engineer's proposal.

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be \$50,000 or over. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

836.606-72 Contract price.

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Chief Facilities Management Officer, Office of Facilities Management, or the facility director. Recommendation for award of the contract at the negotiated fee, will be submitted with a copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, whenever a field pricing report has been received, to the Chief Facilities Management Officer, Office of Facilities Management, or the facility director, as appropriate.

[52 FR 282, Jan. 5, 1987, as amended at 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

836.606-73 Application of 6-percent architect-engineer fee limitation.

(a) The 6-percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys: Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples, and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate

Worksheet, will be used and the proposed technical services shown where necessary and applicable.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996; 67 FR 49260, July 30, 2002]

PART 837—SERVICE CONTRACTING

Subpart 837.1—Service Contracts—General

Sec.

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837.300 Scope of subpart.

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837.7001 General.

837.7002 List of qualified funeral directors.

837.7003 Funeral authorization.

837.7004 Administrative necessity.

837.7005 Unclaimed remains—all other cases.

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

SOURCE: 49 FR 12620, Mar. 29, 1984, unless otherwise noted.

Subpart 837.1—Service Contracts—General

837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

837.104 Personal services contracts.

(a) Personal service contracts having an employer-employee relationship shall not be awarded but will be consummated in accordance with VA Manual MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Department of Veterans Affairs.

(4) Contractor personnel are to be used interchangeably with Department of Veterans Affairs personnel to perform the same function.

(5) The Department of Veterans Affairs retains the right to control and direct the means and methods by which contractor personnel accomplish the work.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 20493, May 7, 1996]

Subpart 837.2—Advisory and Assistance Services

837.203 Policy.

For the purpose of this subpart the definition of advisory and assistance services shall, in addition to examples listed in FAR 37.203, include services to obtain peer review of research proposals.

[64 FR 69221, Dec. 16, 1998]

837.270 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure advisory and assistance services and advisory board memberships only by those individuals designated in 801.670-5 and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of \$500 per letter and to an accumulated annual total of \$2,500 to any individual

or firm. Letters of agreement should only be used where normal procurement channels are not feasible and only for obtaining the following services:

(1) Advisory and assistance services including peer review of research proposals and advisory board memberships.

(2) Management and professional services (837.271)

(3) Instructors and training obtained pursuant to section 7472 of Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The administration head or staff office director will be the highest level approving official for each procurement action which does not exceed \$500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of \$2,500 per year in consulting fees to any individual or firm. (Advisory and assistance services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

(d) Justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and 803.101-3.

(e) Copies of all advisory and assistance services procurements accomplished through letters of agreement shall be provided to the local servicing purchase and contract office for entry into the Federal Procurement Data System.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989; 64 FR 69221, Dec. 16, 1998]

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Contracting officers should be cognizant of the requirements contained in VA Manual MP-3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

Subpart 837.4—Nonpersonal Health-Care Services

837.403 Contract clause.

The contracting officer shall insert the clause at 852.237-7, Indemnification and Medical Liability Insurance, in lieu of FAR Clause 52.237-7, in solicitations and contracts for nonpersonal health-care services, including solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151-8153 and (VAAR) 48 CFR part 873. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR parts 12, 13, 14, or 15 and (VAAR) 48 CFR parts 812, 813, 814, or 815.

[61 FR 52709, Oct. 8, 1996, as amended at 63 FR 69222, Dec. 16, 1998; 68 FR 3469, Jan. 24, 2003]

Subpart 837.70—Mortuary Services

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Department of Veterans Affairs, as provided in 38 U.S.C. 2303.

[61 FR 52709, Oct. 8, 1996, as amended at 63 FR 69222, Dec. 16, 1998]

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel or other personnel designated by the medical center director to perform these functions, a list of funeral directors capable of performing the burial services

specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of \$300. Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce.

[49 FR 12620, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996; 63 FR 69222, Dec. 16, 1998]

837.7003 Funeral authorization.

(a) When a veteran dies while receiving care in a Department of Veterans Affairs health care facility or in a non-Department of Veterans Affairs institution at Department of Veterans Affairs expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, or the person designated by the medical center to perform these functions, will forward to the head of the contracting activity, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of \$300. This service will consist of and will be specified on the purchase order, VA Form 90-2138, Order for Supplies or Services, or VA Form 90-2138-ADP, Purchase Order for Supplies or Services, as follows:

- (1) Preparation of the body, embalming.
- (2) Clothing.
- (3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable).
- (4) Securing all necessary permits.

(5) Ensuring that a United States Flag (provided the funeral director in accordance with Veterans Health Administration Manual M-1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 2303(a)(1)(B). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the \$300 allowance.

(d) In accordance with Veterans Health Administration Manual M-1, Part I, paragraph 14.37, the contracting officer will designate the Chief, Medical Administration Service, or representative, or the person designated by the medical center director to perform these functions, to be responsible for the medical inspection of the mortuary services performed and inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The head of the contracting activity will assist the Chief, Medical Administration Service, or the person designated by the medical center director to perform these functions, in developing the local procedures specified in Veterans Health Administration Manual M-1, Part I, paragraph 14.37c.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989; 63 FR 69222, Dec. 16, 1998]

837.7004 Administrative necessity.

(a) When persons die under Department of Veterans Affairs care who are not legally entitled to such care at Department of Veterans Affairs expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service as prescribed in

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837.7005

837.7003 cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the facility director a written determination that the disposition of the remains must be accomplished by the Department of Veterans Affairs as an administrative necessity. The facility director will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the facility director will be made a part of the contract file.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.7005 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care or treatment of the Department of Veterans Affairs will be referred to the Veterans Services Officer for processing in accordance with Veterans Benefits Administration Manual M27-1, Part II. This manual is available at any Department of Veterans Affairs regional office, medical center or VA office.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION

Sec.

842.000 Scope of part.

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842.1203 Processing agreements.

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

SOURCE: 49 FR 12624, Mar. 29, 1984, unless otherwise noted.

842.000 Scope of part.

This part applies to all contracts, whether sealed bid or negotiated. (See 801.602–70 for requirements for legal review of certain contract administration actions.)

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 51 FR 23072, June 25, 1986; 52 FR 28559, July 31, 1987]

842.070 Definition.

Contract Administration is the coordination of actions required for the performance of a contract including the guidance and supervision necessary to assure that all contractual obligations are fulfilled.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.

(a) Pursuant to FAR policy encouraging interagency cross-servicing in field contract support services, contracting officers of the Department of Veterans Affairs will utilize the support services of other agencies to the extent feasible. Examples of such services are: preaward surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Requirements for support services available from any other Government department or agency will be obtained on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding executed between the parties to the agreement. The agreement should state clearly the accord which has been reached between the two parties involved, especially the obligations assumed by the rights granted each. The agreement will be specific with respect to resources to be provided by both the supplying and receiving activities. It will also provide for funding and reimbursement arrangements, and clauses permitting revisions, modifications thereto, or cancellation thereof, will be included.

842.102 Procedures.

(a) The Department of Defense Directory of Contract Administration Services Components and the Directory of Federal Contract Audit Offices are available through the Department of Veterans Affairs Forms and Publications Depot.

(b) Proposed interagency support agreements with any other Government department or agency involving the expenditures of Department of Veterans Affairs funds of \$5,000 or more will be forwarded by the facility director (or Central Office official) to the Deputy Assistant Secretary for Acquisition and Materiel Management (93),

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842.801-70

who will transmit with recommendation to the General Counsel for legal review and approval, as required by 801.602-70(a)(4).

(1) Proposed agreements, both new and renewal, will be submitted in an original and four copies so as to reach Central Office 60 days prior to the effective date of the agreement.

(2) Complete justification for all proposed agreements will be submitted, as approval depends on the adequacy of the justification.

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 63 FR 69222, Dec. 16, 1998]

Subpart 842.2—Assignment of Contract Administration

842.202 Assignment of contract administration.

Proposed assignments of contract administration responsibility outside of the procuring activity will be forwarded by the facility director to the Deputy Assistant Secretary for Acquisition and Materiel Management (95), who will transmit the proposal to the General Counsel for legal review and approval, as required by 801.602-70(a)(6) and 801.602-71. Complete justification will be provided, specifically addressing the need for and benefits to be provided by assignment of contract administration. (See 801.603-70 for policy on designating representatives of contracting officers, and 48 CFR 9904 (FAR Appendix B) for policy on contracts involving Cost Accounting Standards.)

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 63 FR 69222, Dec. 16, 1998]

Subpart 842.7—Indirect Cost Rates

842.705 Final indirect cost rates.

(a) Contracting officers will request audits on proposed final indirect cost rates and billing rates for use in cost reimbursement, fixed price incentive and fixed price redeterminable contracts as described in FAR Subpart 42.7 unless the quick-closeout procedures described in FAR 42.708 are used. In this case, the contracting officers will perform a review and validation of the contractor's data submitted for accuracy and reasonableness of the proposed rates for negotiating the settle-

ment of indirect costs for a specific contract.

(b) Contracting officers in the Office of Acquisition and Materiel Management and Office of Facilities Management who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or requesting audits through the Assistant Inspector General, Office of Departmental Reviews and Management Support (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector, Office of Departmental Reviews and Management Support (53C). Contracting officers located at field facilities, VA National Acquisition Center and supply depots are required to arrange for the audits through the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer. The Assistant Inspector General, Office of Departmental Reviews and Management Support (53C) will provide such accounting assistance or technical advice as is deemed desirable by the contracting officers.

[49 FR 12624, Mar. 29, 1984, as amended at 52 FR 49017, Dec. 29, 1987; 54 FR 40065, Sept. 29, 1989; 63 FR 69222, Dec. 16, 1998]

Subpart 842.8—Disallowance of Costs

842.801-70 Audit assistance prior to disallowing costs.

When a contracting officer determines during the performance of a cost reimbursement, fixed price incentive or fixed price redetermination contract exceeding the thresholds specified in FAR 15.403-4, that costs should be disallowed, audit assistance will be requested. Such requests submitted by field facility contracting officers will be directed to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for review and forwarding to the Assistant Inspector General, Office of Audit (52), or other recognized audit agency, e.g., the Defense Contract Audit Agency.

[49 FR 12624, Mar. 29, 1984, as amended 63 FR 69222, Dec. 16, 1998]

842.803

842.803 Disallowing cost after incurrence.

Contracting officers may approve contractors' vouchers for payment and process them to the servicing fiscal office. Such approval must be within the limitations of the contracting officer and the contract for which the voucher is submitted must be within the contracting officers delegation of contracting authority. (Note 842.801-70 regarding disallowing costs.)

Subpart 842.12—Novation and Change-of-Name Agreements

842.1203 Processing agreements.

Prior to execution of novation and change-of-name agreements by a Department of Veterans Affairs contracting officer, he/she will forward the agreement and related documents to the Office of the General Counsel for review as to legal sufficiency. The documents will be submitted through the same channels as those prescribed for legal review of contracts in 801.602-72.

[49 FR 12624, Mar. 29, 1984, as amended 63 FR 69222, Dec. 16, 1998]

PART 846—QUALITY ASSURANCE

Subpart 846.3—Contract Clauses

Sec.

846.302-70 Inspection.

846.312 Construction contacts.

Subpart 846.4—Government Contract Quality Assurance

846.408-70 Inspection of subsistence.

846.408-71 Waiver of USDA inspection and specifications.

846.470 Use of commercial organizations for inspections and grading services.

846.471 Determination authority.

846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

846.472-1 Repairs of \$1,000 or less.

846.472-2 Repairs in excess of \$1,000.

Subpart 846.7—Warranties

846.710 Construction contracts.

846.710-70 Special warranties.

846.710-71 Warranty for construction—guarantee period services.

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

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SOURCE: 49 FR 12625, Mar. 29, 1984, unless otherwise noted.

Subpart 846.3—Contract Clauses

846.302-70 Inspection.

Contracts for property will include the clause 852.211-72(a), "Rejected Goods," except that contracts for packinghouse, dairy products, bread and bakery products, and fresh and frozen fruits and vegetables will include the clause prescribed in 852.211-72(b), "Rejected Goods."

[49 FR 12625, Mar. 29, 1984, as amended at 67 FR 49260, July 30, 2002]

846.312 Construction contacts.

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

[67 FR 49260, July 30, 2002]

Subpart 846.4—Government Contract Quality Assurance

846.408-70 Inspection of subsistence.

(a) The contracting officer will determine at the time of issuance of the solicitation whether inspection for specification compliance will be made: (1) Prior to shipment by representatives of the U.S. Department of Agriculture (USDA) or the Department of Commerce, or (2) at the time of delivery by personnel of the purchasing activity. The place of inspection will be indicated in the solicitation.

(b) Since the requirement for USDA or Department of Commerce inspections and certifications results in additional contractor costs which may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Nutrition and Food Service, must evaluate the need for such inspections. The evaluation shall include the following:

(1) The quality assurance already provided by other mandatory inspection systems;

(2) The proposed suppliers' own quality control system;

(3) Experience with the proposed suppliers;

(4) The feasibility of prequalifying suppliers' quality assurance systems and subsequently waiving certifications for future solicitations; and

(5) The cost of the inspections.

(c) When either the USDA or the Department of Commerce is indicated as the inspection activity, the solicitation will also provide that the contractor is responsible for:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspection activity a certificate indicating the product complies with specifications. Such certificate, or copy, should accompany the shipment or be furnished to the receiving installation prior to shipment. The contractor shall notify the installation when the certificate is not immediately available.

(3) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer. Products not so identified shall be rejected.

(4) Furnishing samples for inspection at his/her expense.

(5) Indicating the address where inspection will be made.

(d) The contracting officer will furnish a copy of the purchase document to the inspecting activity.

[49 FR 12625, Mar. 29, 1984, as amended at 51 FR 37027, Oct. 17, 1986; 54 FR 40065, Sept. 29, 1989; 63 FR 69222, Dec. 16, 1998]

846.408-71 Waiver of USDA inspection and specifications.

(a) Contracting officers may purchase butter; cheese (except cottage cheese); sausage; meat food products;¹ bacon, smoked; and bacon, Canadian style, without reference to the specifications in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C900-SL, and the USDA inspection requirements, when the amount of an item to be purchased will not exceed 500 pounds per delivery. When these items are procured to-

¹Meat food products shall mean processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

gether with items that are not exempt, the solicitation shall include the following:

Items * * * are not required to be in accordance with the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C900-SL, and the special USDA inspection is not required. Inspection for quality and condition will be made by VA upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(b) As appropriate, the following statements shall be included in each invitation for bid, request for proposal or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products:

(i) This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption.

(c) When using a "brand name or equal" purchase description every brand name item that is known to be acceptable and available in the area will be listed.

[49 FR 12625, Mar. 29, 1984, as amended at 51 FR 37028, Oct. 17, 1986; 63 FR 69222, Dec. 16, 1998]

846.470 Use of commercial organizations for inspections and grading services.

Commercial organizations may be used for inspection and grading services when it is determined that the results of a technical inspection or grading are dependent upon the application

846.471

of scientific principles or specialized techniques, and it is further determined that:

(a) The Department of Veterans Affairs is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(b) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(c) The services may be performed without direct Government supervision.

[49 FR 12625, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

846.471 Determination authority.

The determinations required in 846.470 will be made by:

(a) The Chief Facilities Management Officer, Office of Facilities Management, for those items and services for which purchase authority has been assigned to him/her.

(b) The Director, Veterans Canteen Service, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from Department of Veterans Affairs supply sources).

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management for all other supplies, equipment and services.

[49 FR 12625, Mar. 29, 1984, as amended at 63 FR 69222, Dec. 16, 1998]

846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.

Final inspection will be made of all repair programs upon completion. In addition such intermediate or progress inspections will be made on extensive or technical jobs as specified in the contract.

846.472-1 Repairs of \$1,000 or less.

(a) Generally, inspections required will be made by the management broker. If the property has not been assigned to a management broker or if it has been determined that the nature of the repairs requires supervision by a

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technician, the inspection will be made by a qualified fee or staff inspector.

(b) There is no form prescribed for this inspection but VA Form 26-1839, Compliance Inspection Report, may be used if desired. Regardless of the form in which the report is submitted, it will be in sufficient detail to identify the contractor, property, and the repair program and to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

846.472-2 Repairs in excess of \$1,000.

(a) The final inspection and any intermediate or progress inspections on repairs exceeding \$1,000 will be made by a qualified fee or staff inspector. If a management broker is qualified to supervise major repairs, he/she may be authorized to conduct the inspections.

(b) Report of inspections will be made on VA Form 26-1839, Compliance Inspection Report. The form will be completed to identify the property, contractor, and repair program and will also include such detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the contract terms. Any deficiencies noted will be itemized and explained in detail.

Subpart 846.7—Warranties

SOURCE: 67 FR 49260, July 30, 2002, unless otherwise noted.

846.710 Construction contracts.

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

846.710-70 Special warranties.

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

846.710-71 Warranty for construction—guarantee period services.

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

PART 847—TRANSPORTATION

Subpart 847.3—Transportation in Supply Contracts

Sec.

847.303-1 F.o.b. origin.

847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

847.304 Determination of delivery terms.

847.304-1 General.

847.305-70 Potential destinations known but quantities unknown.

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

SOURCE: 49 FR 12627, Mar. 29, 1984, unless otherwise noted.

Subpart 847.3—Transportation in Supply Contracts

847.303-1 F.o.b. origin.

(a) Normally shipments falling within this category will be shipped on a Government bill of lading, except for those shipments covered by 41 CFR 101-41.304-2.

(b) Shipment of flat bronze markers by the vendor, as directed by the Chief, Centralized Contracting Division, or his/her designee, will be made by parcel post. VA Form 40-4952, Order for Headstone or Marker, will be used for this purpose.

[49 FR 12627, Mar. 29, 1984, as amended at 63 FR 69222, Dec. 16, 1998]

847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as "f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice," under each of the following circumstances:

(1) When it has been carefully determined that an f.o.b. origin purchase or

delivery order will have transportation charges not in excess of \$100 and the occasional exception does not exceed that amount by an unreasonable amount;

(2) Single parcel shipments via express, courier, small package, or similar carriers, *regardless of shipping cost*, if the parcel shipped weighs 70 pounds or less and does not exceed 108 inches in length and girth combined;

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed \$250 per shipment.

(b) Orders issued on VA Form 90-2138, Orders for Supplies or Services, will direct the vendor's attention to shipping instructions on the reverse of the form. When VA Form 90-2138 is not used, the vendor will be instructed as follows:

(1) Consistent with the terms of the contract, pack, mark and prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Add transportation charges as a separate item on your invoice. The invoice must bear the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Do not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Do not prepay transportation charges on this order if such charges are expected to exceed \$100. Ship collect and annotate the commercial bill of lading, "To be converted to Government Bill of Lading."

(c) Each contracting officer is responsible for:

(1) Making a diligent effort to obtain the most accurate estimate possible of transportation charges; and

(2) Utilizing the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When in accordance with FAR Subpart 28.3 and FAR 47.102 it is determined that a shipment is to be insured

847.304

or the value declared, the vendor will be specifically instructed to do so on the order, when a written order is used. If the order is an oral order, all copies of the purchase request will be annotated to show that insurance/declared value was specifically requested.

847.304 Determination of delivery terms.

847.304-1 General.

When alternative delivery terms are appropriate but the contracting officer elects to use only one in the invitation for bids, or request for proposals, he shall document the contract file to show his reasons for so doing.

847.305-70 Potential destinations known but quantities unknown.

When the VA National Acquisition Center contracts for decentralized procured items by all Department of Veterans Affairs installations, the evaluation of bids must follow specific procedures. To place each bid on an equal basis, even though specific quantities required by each hospital cannot be predetermined, an anticipated demand factor will be used in proportion to the number of hospital beds or patient workload. The clause prescribed in 852.247-70 shall be used in these instances.

[49 FR 12627, Mar. 29, 1984, as amended at 63 FR 69222, Dec. 16, 1998]

PART 849—TERMINATION OF CONTRACTS

Subpart 849.1—General Principles

Sec.

849.106 Fraud or other criminal conduct.

849.107 Audit of prime contract settlement proposals and subcontract settlements.

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

849.111-71 Required review and approval.

849.111-72 Submission of information.

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.

849.402-6 Repurchase against contractor's account.

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

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SOURCE: 49 FR 12628, Mar. 29, 1984, unless otherwise noted.

Subpart 849.1—General Principles

849.106 Fraud or other criminal conduct.

When the circumstances set forth in FAR 49.106 are encountered, the contracting officer will immediately discontinue all negotiations. The contracting officer will submit all of the pertinent facts necessary to support his/her reasoning to the Deputy Assistant Secretary for Acquisition and Materiel Management (95), (or the Chief Facilities Management Officer (08) in the case of contracting officers from the Office of Facilities Management). The Deputy Assistant Secretary for Acquisition and Materiel Management (95), or the Chief Facilities Management Officer, Office of Facilities Management, will review the submission and fully develop the facts. If the evidence indicates fraud or other criminal conduct, the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief of Facilities Management Officer, Office of Facilities Management, will forward the submission with his/her recommendations, through channels (to include the General Counsel, if appropriate), to the Inspector General (51) for referral to the Department of Justice. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer, Office of Facilities Management, as to any further action to be taken. Pending receipt of this advice, the matter will not be discussed with the contractor. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General. If inquiry is made by the contractor, he/she will be advised only that the proposal has been forwarded to higher authority.

[49 FR 12627, Mar. 29, 1984, as amended at 63 FR 69222, Dec. 16, 1998]

Department of Veterans Affairs

849.111-72

849.107 Audit of prime contract settlement proposals and subcontract settlements.

Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FAR 49.107. Contracting officers in the Office of Acquisition and Materiel Management and Office of Facilities Management who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or to request audits through the Assistant Inspector General, Office of Departmental Reviews and Management Support (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit to the Assistant Inspector General, Office of Departmental Reviews and Management Support (53C), to request audits directly from the cognizant agencies. Audit control numbers may be obtained verbally from the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

[49 FR 12628, Mar. 29, 1984, as amended at 52 FR 42440, Nov. 5, 1987; 54 FR 40065, Sept. 29, 1989; 63 FR 69223, Dec. 16, 1998]

849.111 Review and approval of proposed settlements.

849.111-70 Settlement review boards.

The Deputy Assistant Secretary for Acquisition and Materiel Management and the Chief Facilities Management Officer will each establish within his/her own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should

include at least one lawyer and one accountant.

[49 FR 12628, Mar. 29, 1984, as amended at 63 FR 69223, Dec. 16, 1998]

849.111-71 Required review and approval.

Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

(a) The amount of settlement, by agreement or determination, involves \$50,000 or more; or

(b) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract, and:

(1) In the case of a complete termination, the fee, as adjusted, is \$50,000 or more; or

(2) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is \$50,000 or more; or

(c) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(d) The contracting officer, in his/her discretion, desires review by the settlement review board.

849.111-72 Submission of information.

(a) The contracting officer shall submit to the appropriate settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) The property disposal report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the board in arriving at a decision to approve or disapprove the

proposal. The board may, in its discretion, require the submission of additional information.

(b) When a review of a proposed settlement is required and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the proposed settlement or determination to the settlement review board through the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Chief Facilities Management Officer.

[49 FR 12628, Mar. 29, 1984, as amended at 63 FR 69223, Dec. 16, 1998]

Subpart 849.4—Termination for Default

849.402 Termination of fixed-price contracts for default.

849.402-6 Repurchase against contractor's account.

(a) VA Form 90-2237, Request, Turn-in, and Receipt for Property or Serv-

ices, or the file copy of the purchase order covering the purchase of supplies, equipment or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Department of Veterans Affairs. When reprocurement results in the payment of excess costs and the purchase is made through the Supply Fund, the excess costs, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well those of the Government.

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.1—Instructions for Using Provisions and Clauses

Sec.

- 852.101 Using Part 852.
- 852.102 Incorporating provisions and clauses by reference.

Subpart 852.2—Texts of Provisions and Clauses

- 852.203-71 Display of VA hotline poster.
- 852.207-70 Report of employment under commercial activities.
- 852.209-70 Organizational conflicts of interest.
- 852.211-70 Requirements for operating and maintenance manuals.
- 852.211-71 Guarantee clause.
- 852.211-72 Inspection.
- 852.211-73 Frozen processed foods.
- 852.211-74 Telecommunications equipment.
- 852.211-75 Technical industry standards.
- 852.211-76 Noncompliance with packaging, packing and/or marking requirements.
- 852.211-77 Brand name or equal.
- 852.211-78 Liquidated damages.
- 852.214-70 Caution to bidders—bid envelopes.
- 852.214-71 Alternate items.
- 852.214-73 Bid samples.
- 852.216-70 Estimated quantities for requirements contracts.
- 852.219-70 Veteran-owned small business.
- 852.222-70 Contract Work Hours and Safety Standards Act—nursing home care contract supplement.
- 852.228-70 Bond premium adjustment.
- 852.229-70 Purchases from patient's funds.
- 852.229-71 Purchases for patients using Government funds and/or personal funds of patients.
- 852.233-70 Protest content.
- 852.233-71 Alternate Protest Procedure.
- 852.236-71 Specifications and drawings for construction.
- 852.236-72 Performance of work by the contractor.
- 852.236-74 Inspection of construction.
- 852.236-76 Correspondence.
- 852.236-77 Reference to "standards".
- 852.236-78 Government supervision.
- 852.236-79 Daily report of workers and materials.
- 852.236-80 Subcontracts and work coordination.
- 852.236-81 Work coordination (alternate provision).
- 852.236-82 Payments under fixed-price construction contracts (without NAS).
- 852.236-83 Payments under fixed-price construction contracts (including NAS).
- 852.236-84 Schedule of work progress.
- 852.236-85 Supplementary labor standards provisions.
- 852.236-86 Worker's compensation.
- 852.236-87 Accident prevention.
- 852.236-88 Contract changes—supplement.
- 852.236-89 Buy American Act.
- 852.236-90 Restriction on submission and use of equal products.
- 852.236-91 Special notes.
- 852.237-7 Indemnification and Medical Liability Insurance.
- 852.237-70 Contractor responsibilities.
- 852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).
- 852.246-1 Special warranties.
- 852.246-2 Warranty for construction—guarantee period services.
- 852.247-70 Transportation provision for bid evaluation.
- 852.252-1 Provisions or clauses requiring completion by the offeror or prospective contractor.
- 852.270-1 Representatives of contracting officers.
- 852.270-2 Bread and bakery products.
- 852.270-3 Purchase of shellfish.
- 852.270-4 Commercial advertising.
- 852.271-70 Services provided eligible beneficiaries.
- 852.271-71 Visits to Department of Veterans Affairs guidance centers.
- 852.271-72 Time spent by counselee in counseling process.
- 852.271-73 Use and publication of counseling results.
- 852.271-74 Inspection.
- 852.271-75 Extension of contract period.
- 852.273-70 Late offers.
- 852.273-71 Alternative negotiation techniques.
- 852.273-72 Alternative evaluation.
- 852.273-73 Evaluation—health-care resources.
- 852.273-74 Award without exchanges.

AUTHORITY: 38 U.S.C. 501; 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 807.304-77 and 873.110, the following clause must be included

in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

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 reassignment 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, as amended at 68 FR 3469, Jan. 24, 2003]

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 subcontractors) 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 equip-

ment 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 rec-

ommended 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

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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.

(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

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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(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]

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.

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(End of clause)

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

852.211-73 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]

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:

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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.

(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 dis-

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.

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count 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 described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in 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

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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:

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.

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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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 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

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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, 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

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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 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]

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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 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]

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]

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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:

852.236-76

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.

(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 "STANDARDS" (JUL 2002)

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in 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]

48 CFR Ch. 8 (10-1-06 Edition)

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:

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, 2002q]

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 1 (JUL 2002) For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepia or photographic paper reproductions) of the same scale. Separate drawings shall depict iden-

tical 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 coordination drawings until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

[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 per-

centages 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 preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of clause)

Alternate I (JUL 2002) If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

[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
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing 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.

(End of clause)

Alternate I (JUL 2002) If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the 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

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which will be subject to the contracting officer's approval.

(End of clause)

(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.

[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.

[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]

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 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 contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of clause)

[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]

(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 percent completion.

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 infor-

mation 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

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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 else-

where 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 clause)

Alternate I (JUL 2002) As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

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(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 per-

son 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:

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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 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.]

(End of provision)

[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]

(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:

DETERMINING TRANSPORTATION COSTS FOR BID EVALUATION (APR 1984)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

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

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852.270-2 Bread and bakery products.

(End of clause)

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

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

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 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.

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:

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.

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(End of clause)

(End of clause)

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

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

852.271-73 Use and publication of counseling results.

852.273-70 Late offers.

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

As prescribed in 873.110(a), insert the following provision:

PUBLISHING RESULTS (APR 1984)

LATE OFFERS (JAN 2003)

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.

This provision replaces paragraph (f) of FAR provision 52.212-1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of clause)

(End of provision)

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

[68 FR 3469, Jan. 24, 2003]

852.271-74 Inspection.

852.273-71 Alternative negotiation techniques.

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

As prescribed in 873.110(b), insert the following provision:

INSPECTION (APR 1984)

ALTERNATIVE NEGOTIATION TECHNIQUES (JAN 2003)

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.

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of clause)

(End of provision)

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

[68 FR 3469, Jan. 24, 2003]

852.271-75 Extension of contract period.

852.273-72 Alternative evaluation.

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

As prescribed in 873.110(c), insert the following provision:

EXTENSION OF CONTRACT PERIOD (APR 1984)

ALTERNATIVE EVALUATION (JAN 2003)

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.

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—
[Contracting officer insert description of how the information may be viewed electronically or

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otherwise]. Offerors may revise offers any time during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[68 FR 3469, Jan. 24, 2003]

852.273-73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212-2, the contracting officer may insert a provision substantially as follows:

EVALUATION—HEALTH-CARE RESOURCES (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:

[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without

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further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

[68 FR 3469, Jan. 24, 2003]

852.273-74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

AWARD WITHOUT EXCHANGES (JAN 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

[68 FR 3469, Jan. 24, 2003]

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).

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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.

853.213 Simplified acquisition procedures.

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services:

(a) VA Forms 90-2138, Order for Supplies or Services, or 90-2138-ADP, Purchase Order for Supplies or Services, shall be used as stated in 813.307. They will be used in lieu of Optional Form 347, Order for Supplies and Services, or Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

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

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

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

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

(d) VA Form 10-2421, Prosthetics Authorization and Invoice, will be used for indicated procurements not in excess of \$300 as prescribed in 813.307.

[64 FR 69935, Dec. 15, 1999]

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

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of the Department of Veterans Affairs, will be utilized for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236-1 [Reserved]

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

VA Form 08-6298, Architect-Engineer Fee Proposal, will be used as prescribed in 836.606-71.

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

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

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in subpart 871.1.

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(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

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

The following forms will be used in acquiring education or rehabilitation services as prescribed in subpart 871.2:

(a) VA Form 22-1903, Contract for Education and Training.

(b) VA Form 22-1905, Authorization and Certification of Entrance or Re-entrance into Training and Certification of Trainee Status.

(c) VA Form 22-1931, Contract for Services Relating to Vocational Counseling.

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

The following forms are prescribed for use in obtaining services for the

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Veterans Benefits Administration Education programs:

(a) VA Form 22-1982, State Approving Agency (SAA) Reimbursement Contract.

(b) VA Form 22-1982e, Schedule No. 1 to the SAA Reimbursement Contract; Accredited and Non-Accredited Courses Under Chapter 32, 34, and 35, or 36, of Title 38 United States Code, whichever is applicable.

(c) VA Form 1982c, Schedule No. 2 to the SAA Reimbursement Contract; Apprenticeship Or Other Training On-the-Job.

(d) VA Form 22-7398, Quarterly Report of State Approving Agency Activities Under Chapter 36, Title 38, United States Code.

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 870—SPECIAL PROCUREMENT CONTROLS

Subpart 870.1—Controls

Sec.

870.111 Subsistence.

870.111-5 Frozen processed food products.

870.112 Telecommunications equipment.

870.113 Paid use of conference facilities.

870.114 Asbestos.

870.114-1 General.

870.114-2 Background.

870.114-3 Approving authority.

870.114-4 Exempted products containing asbestos.

870.115 Food service equipment.

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

SOURCE: 49 FR 12640, Mar. 29, 1984, unless otherwise noted.

Subpart 870.1—Controls

870.111 Subsistence.

870.111-5 Frozen processed food products.

(a) All frozen, processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the U.S. Department of Agriculture (USDA). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(b) All frozen, processed food products procured which contain fish or fish products will be processed or prepared in plants operated under the supervision of the U.S. Department of Commerce (USDC). The products listed in USDC publication titled, "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants

under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal, affixed to a container, indicating compliance with USDC regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Producers of frozen bakery products which are shipped in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, it must be verified that the product, in fact was shipped interstate or that the producer ships products to other purchasers interstate. In addition, the product must bear a label complying with the Act which requires that all ingredients be listed according to the order of their predominance.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

870.112 Telecommunications equipment.

(a) Solicitations, including those for construction, based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in VA Manual MP-6,

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Part VIII,¹ will include the clause required by 852.211-74.

(b) The descriptive literature to be furnished by the contractor after award, required by the clause in 852.211-74, is to be reviewed and approved by the Telecommunications Support Service prior to delivery and/or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it together with a copy of the contract, the formal specification, or the detailed purchase description to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team.

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description are subject to the following:

(1) Prior to award, contracting officers will forward to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors prior to receipt of Central Office reaction.

(3) Allowance of at least 30 calendar days for acceptance will be specified in the solicitation in order to allow sufficient time for the review required by this paragraph (c). (See FAR 52.214-16.)

[49 FR 12640, Mar. 29, 1984, as amended at 50 FR 798, Jan. 7, 1985; 54 FR 30044 and 30045, July 18, 1989; 54 FR 40066, Sept. 29, 1989; 63 FR 17339, Apr. 9, 1998]

870.113 Paid use of conference facilities.

(a) The rental of space for VA-sponsored symposia and training sessions may be unwarranted when other alternatives are available at no expense or reduced expense to the Government. After the geographical location for a VA conference has been selected, based on minimum overall travel costs for all Government participants and other rel-

evant factors, a request for conference space will be forwarded to the servicing Supply activity. The request for conference space should afford the contracting officer every opportunity to secure rent-free facilities.

(b) The following criteria for the selection of an appropriate facility will apply:

(1) A thorough effort will be made to schedule conferences and training sessions so that the conference facilities of VA installations in the city where the conference is held may be used.

(2) Where no VA space is available, the General Services Administration will be contacted to determine if there is other Government agency space which may be used.

(3) Efforts will be made to schedule conferences, where Government space is not available, through hotels and motels which offer free conference facilities in exchange for a stipulated number of lodging reservations for participants. Surcharges per lodging or increased room rates, to offset the cost of the conference room, shall be considered payment for such space.

(4) In the event none of these is available on the desired dates, consideration will be given to rescheduling the conference to avail VA of the use of facilities without payment of a fee.

(5) If none of the above is practical, rental conference space will be obtained. Complete documentation of efforts to secure free conference space, as outlined above, will be maintained in the purchase order file. The costs of coffee, refreshments, meals, lodging, tips and other supplies and services not directly related to the presentations within the conference space are not allowable.

(c) The conference coordinator of the requesting organization will continue to be responsible for individual room reservations, including any cancellations.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

870.114 Asbestos.

870.114-1 General.

This section applies to the purchase and use of asbestos products and equipment or materials containing asbestos

¹ Available at any Department of Veterans Affairs facility.

products in the Department of Veterans Affairs.

870.114-2 Background.

Exposure to asbestos is associated with chronic and debilitating lung disease and cancer. To reduce the health hazard related to the exposure to asbestos, the U.S. Environmental Protection Agency and the U.S. Department of Labor (Occupational Safety and Health Administration) have issued specific regulations on asbestos. Although these regulations do not call for a complete ban on the use of asbestos, they do impose strict requirements on its use, airborne contamination and disposal.

870.114-3 Approving authority.

Asbestos products and equipment or materials containing asbestos products shall not be specified nor purchased for use in the Department of Veterans Affairs if any suitable substitutes are available. If suitable substitutes are not available, specific authorization to purchase and use asbestos products and equipment or materials specifying asbestos products, must be granted by the Secretary or designee. Requests for authorization will be submitted through the Director, Network Program Support (10NB). The following information will be provided:

(a) The name of the product, source of supply, and physical form of asbestos as used in the product or equipment;

(b) A description of use, including purpose, urgency, methodology, qualities, and by whom; and

(c) Safeguards being employed, with particular emphasis on the identification of the asbestos products, and procedures to be taken to prevent airborne contamination and disposal.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989; 63 FR 69223, Dec. 16, 1998]

870.114-4 Exempted products containing asbestos.

The Director, Network Program Support (10NB), VA Central Office, is responsible for maintaining a list of products containing asbestos which are

exempted by the Secretary or designee from this policy.

[49 FR 12640, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989; 63 FR 69223, Dec. 16, 1998]

870.115 Food service equipment.

(a) All new food service equipment purchased for Nutrition and Food Service through other than the Defense General Supply Center (DGSC) sources must meet requirements set forth by the National Sanitation Foundation (NSF).

(b) The contracting officer will accept an affixed NSF label and/or documentation of the certification by NSF from the contractor as evidence that the subject equipment meets sanitation standards issued by the Foundation.

[49 FR 12640, Mar. 29, 1984, as amended at 63 FR 69223, Dec. 16, 1998]

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

Subpart 871.1—Loan Guaranty Program

- Sec.
- 871.100 Scope of subpart.
- 871.101 Policy.
- 871.102 Authorization for repairs to properties.
- 871.104 Qualification of bidders.
- 871.106 Lien waivers.
- 871.107 Stipulations against liens.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

- 871.200 Scope of subpart.
- 871.201 General.
- 871.201-1 Requirements for the use of contracts.
- 871.201-2 Requirements when contracts are not required.
- 871.201-3 Medical services.
- 871.201-4 Letter contracts.
- 871.202 Marking and release of supplies.
- 871.203 Renewals or supplements to contracts.
- 871.204 Guaranteed payment.
- 871.205 Proration of charges.
- 871.206 Other fees and charges.
- 871.207 Payment of tuition or fees.
- 871.208 Rehabilitation facilities.
- 871.209 Records and reports.
- 871.210 Correspondence courses.
- 871.211 Information concerning correspondence courses.

**Subpart 871.3—Education Program
[Reserved]**

AUTHORITY: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 30, 31, 32, 35, 36, 37; 40 U.S.C. 486(c).

SOURCE: 49 FR 12641, Mar. 29, 1984, unless otherwise noted.

**Subpart 871.1—Loan Guaranty
Program**

871.100 Scope of subpart.

This subpart sets forth policy and procedure with respect to the loan guaranty and direct loan programs as it pertains to property management, including the acquisition, management, and disposition of property, real, personal, or mixed, which were secured by loans guaranteed, insured, or made pursuant to Title 38, United States Code.

871.101 Policy.

All acquisitions for the repair and maintenance of VA property acquired under 38 U.S.C. Chapter 37 shall be made in accordance with FAR Parts 14, 15, and 16; (VAAR) 48 CFR Parts 814, 815, and 816; and (VAAR) 48 CFR subpart 871.1.

(Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 37; 40 U.S.C. 486(c))

[61 FR 20493, May 7, 1996]

871.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers, VA Regional Offices, are authorized to approve a repair program for any Department of Veterans Affairs property acquired under Chapter 37, Title 38, United States Code, where the cost does not exceed \$25,000. A repair program means the aggregate amount of the proposed contracts which are contemplated in a property analysis by the Loan Guaranty activity.

(b) In those cases where the expenditure is known or estimated to exceed \$25,000, the request, together with the loan guaranty folder, will be forwarded to the Under Secretary for Benefits for approval.

(c) During the period when the Department of Veterans Affairs has assumed custody of the property from a holder and prior to its conveyance to the Department of Veterans Affairs pursuant to 38 CFR 36.4320, repairs are authorized not in excess of \$3,500 when appropriate to make the property ready for sale at an earlier date than would otherwise be possible if the repair program was delayed until such time as the Department of Veterans Affairs acquired absolute title. In those cases where the expenditure is known or estimated to exceed \$3,500, the request, together with the loan guaranty folder, will be forwarded to the Under Secretary for Benefits for approval.

(d) No repairs may be made to property by the holder when it has continued custody except for emergency repairs not in excess of \$500 unless adequate notice has been given the Director, VA Regional Office. Emergency repairs as applied in this paragraph will be deemed to mean those requiring immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, and includes the initial cleanup of the property in order to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, at the time a property is assigned, to incur expenses for fuel and utilities or other recurring items which are required to be furnished by the Department of Veterans Affairs to its tenants or are required in the maintenance of the property. Advance blanket authorizations to management brokers will be limited to repairs not in excess of \$500 in any transaction, (the management broker will either submit receipts with the invoice or maintain such receipts for inspection). Expenditures in excess of \$500 require prior approval of the Director, Regional Office, having jurisdiction of the property. Repair jobs may not be split to circumvent this restriction.

[49 FR 12641, Mar. 29, 1984, as amended at 55 FR 31600, Aug. 3, 1990; 61 FR 20493, 20494, May 7, 1996; 63 FR 69223, Dec. 16, 1998]

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871.104 Qualification of bidders.

(a) Qualification of bidders shall be established in accordance with procedures outlined in FAR Subpart 9.1 and subpart 809.1 of this chapter.

(b) Management brokers are not considered acceptable bidders for repair contracts due to their close association on a fee basis with the Department of Veterans Affairs. This restriction would apply equally to any contracting firm in which the management broker has an interest and in which it could be presumed that such firm would have an advantage over the other bidders. This does not preclude the performance of work by management brokers of a routine recurring maintenance category or minor repairs by personnel employed directly on the payroll of the broker. In these cases, it must be established that any charges for such services are not in excess of the prevailing fees for like services in the area.

871.106 Lien waivers.

(a) Contracts in the amount of \$2,500 or more will contain a requirement that the contractor will sign a formal release in full or a lien waiver before payment may be made. The release or waiver will accompany the contractor's invoice.

(b) Contractors will be required to notify the Director, Regional Office, of any subcontractors for services or materials in excess of \$2,500. Such subcontractors will be required to sign the release or waiver jointly with the prime contractor or to execute release or waiver in the subcontractor's own name.

(c) Prior to any authorized partial payment the contractor will be required to execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver will be prepared in accordance with local law and will be in form acceptable by the District Counsel.

[49FR 12641, Mar. 29, 1984, as amended at 61 FR 20494, May 7, 1996]

871.107 Stipulations against liens.

(a) Where determined necessary by the Director, Regional Office, contracts

in an amount less than \$2,500 may contain the following:

The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) Contracts in the amount of \$2,500 or more where there is doubt as to the final responsibility of the contractor will provide maximum protection to the Government by including such requirements as are available under local law. Advice and approval of any contract stipulation or legal stipulations against liens will be obtained from the District Counsel.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31, and contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36 and 10 U.S.C. Chapters 106, 107, and 1606.

(Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 30, 31, 32, 35, 36; 40 U.S.C. 486(c))

[61 FR 20494, May 7, 1996]

871.201 General.

871.201-1 Requirements for the use of contracts.

Contracts will be negotiated for tuition, fees, books, supplies and other allowable expenses incurred by the institution, training establishment or employer for the training and rehabilitation of eligible veterans under Chapter 31, Title 38, United States Code, under the following conditions:

(a) With institutions offering courses of instruction by correspondence. Courses of instruction by correspondence is deemed to mean a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation

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of required written work which involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) With institutions, training establishments, employers, or individuals approved to provide training and rehabilitation services under Chapter 31, Title 38, United States Code, for whom special services or special courses are furnished at the request of the Department of Veterans Affairs. The terms "special services" or "special courses" have the same meaning as under 831.7001-2.

[49 FR 12641, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985]

871.201-2 Requirements when contracts are not required.

(a) When a contract is not required, a signed statement of charges will be obtained from the educational institution or training establishment for courses to be offered, including the rate of tuition, fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy and such other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 22-1905, Authorization and Certification of Entrance or Reentrance into Training, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those charges paid by nonveterans or that is published in the school catalog or other published document.

(b) For the purpose of this section a contract will not be required when all tuition, fees, books, supplies, or services necessary to train, or educate an eligible veteran under Chapter 31, Title 38, United States Code, are published in the school catalog or other published document.

[49 FR 12641, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985]

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871.201-3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements, or arrangements are separate and distinct from any other medical service under the jurisdiction of the Veterans Health Administration to which the veteran may be entitled and no certificate of eligibility is required from that administration.

[49 FR 12641, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989; 61 FR 20494, May 7, 1996]

871.201-4 Letter contracts.

Letter contracts are authorized for use in accordance with the provision of FAR 16.603 and in those cases in which it is not possible to complete a formal contract with an approved educational institution prior to the enrollment of eligible veterans for training.

871.202 Marking and release of supplies.

Supplies will not be marked to indicate ownership by the United States and will be deemed released to the trainee at the time they are furnished.

871.203 Renewals or supplements to contracts.

Except for contracts for educational and vocational counseling, contracts may be renewed from year to year, providing there is no change in the schedule or provisions as originally consummated by completion of a renewal agreement no later than 30 days prior to the expiration of the contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of the supplemental agreement.

(b) Contracts for educational and vocational counseling may provide for automatic extension from year to year.

871.204 Guaranteed payment.

No contract or agreement may be entered into with any institution or training establishment whereby the Department of Veterans Affairs will be required to pay a minimum charge, or required to enroll a minimum number

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of participants per quarter, semester, term, course, or other period.

[49 FR 12641, Mar. 29, 1984; 50 FR 798, Jan. 7, 1985]

871.205 Proration of charges.

The contract will include the exact formula agreed on for the proration of charges in the event that the veteran's program is interrupted or discontinued prior to the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

Fees and other charges which are not prescribed by law but are by non-governmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a Chapter 31 participant, may be paid provided there are no facilities feasibly available whereby the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees will be made in accordance with part 813.

[49 FR 12641, Mar. 29, 1984, as amended at 54 FR 40066, Sept. 29, 1989]

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees will provide for the following:

(1) Payment for tuition or fees will be made in arrears and will be prorated in installments over the school year or the length of the course except that institutions may be paid in accordance with the provision of paragraph (a)(2) of this section, provided such institutions operate on a regular term, quarter, or semester basis and normally accept students only at the beginning of the term, quarter, or semester and provided for further such institutions are either:

(i) Institutions of higher learning that use a standard unit of credit recognized by accrediting associations (such institutions will include those which are members of recognized na-

tional or regional educational accrediting associations, and those which, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions which are members of national or regional accrediting associations).

(ii) Public tax supported institutions.

(iii) Institutions operated and controlled by State, county, or local boards of education.

(2) Institutions coming within the exceptions of paragraph (a)(1) of this section which have a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(3) Proration of charges will not apply to a fee which is for noncontinuing service such as registration fee, etc.

(b) The period for which payment of charges may be made will be the period of actual enrollment and subject to the following:

(1) The effective date will be the date of the trainee's entrance into training status except that payment may be made for an entire-semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or will not set a date acceptable to the Department of Veterans Affairs, payment may be prorated on the basis of attendance regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

(c) The terminal date to which payment will be made is the day following:

(1) The end of the semester, term or quarter during which the training is furnished.

(2) The date of interruption or discontinuance of training.

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(3) The date of completion of the course.

[49 FR 12641, Mar. 29, 1984, as amended at 50 FR 798, Jan. 7, 1985; 61 FR 20494, May 7, 1996]

871.208 Rehabilitation facilities.

The provisions for payment of charges to rehabilitation facilities for the rehabilitation services provided under Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements will provide for the number and frequency of reports, adequate financial records to support payment for each trainee and maintenance of attendance and progress records. Such records will be preserved for a period of three years.

871.210 Correspondence courses.

Contracts with institutions for correspondence courses will provide that:

(a) Major changes in courses or course material will not be binding on the Department of Veterans Affairs until such time as a supplemental agreement is negotiated to the contract.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material such as revision of text, the substitution of a newer lesson for an older one, or the substitution of equipment of equal or greater value, are permitted without supplemental agreements. Such minor changes and revisions shall be placed on file with the contracting officer at the time of the change or revision.

(c) Trainees be provided with prompt and adequate lesson service and, unless otherwise specified in the contract, be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled nonveteran students.

(d) All lessons be adequately serviced on an individual basis. Grouping of lessons, into units or partial servicing does not meet this requirement.

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(e) Each lesson must have a separate examination adequate in terms of lesson content.

(f) The training of persons under a Department of Veterans Affairs contract or the fact that the United States is utilizing the facilities of the institution for training veterans shall not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under Chapter 31, Title 38, United States Code, and shall not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges are not in excess of those charged non-veterans.

(h) That payment will be made on a lesson completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment will be made only once for each lesson even through it is necessary to service a lesson more than once.

871.211 Information concerning correspondence courses.

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in Department of Veterans Affairs contracts may be directed to the institutions offering the courses.

Subpart 871.3—Education Program [Reserved]

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

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873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR differs from the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

873.102 Definitions.

Commercial service means a service, except construction exceeding \$2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

873.103 Priority sources.

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Jav-

its-Wagner-O'Day Act (41 U.S.C. 46-48c) and FAR subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

873.104 Competition requirements.

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required.

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that

includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6.

873.105 Acquisition planning.

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service.

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108.

(d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions,

and conclusions and included in the contract file, along with a copy of the briefing materials.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer.

(b) Techniques to promote early exchange of information include—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;
- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft Requests for proposals (RFPs);
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (*e.g.*, Internet); and
- (11) Use of the Procurement Marketing and Access Network (PRO-NET).

873.107 Socioeconomic programs.

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research,

the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502-2, and 19.502-3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government.

(b) *Rejecting Small Business Administration (SBA) recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless a determination is made in writing by the contracting officer that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding \$5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding \$5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not re-

ceived by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of Competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or

solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)).

(c) For acquisitions below the SAT, a public announcement is optional.

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873.

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873.

(b) *Statement of work/Specifications.* Statements of work or specifications

must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.

(c) *Documentation.* Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).

(e) *Cancellation of procurements.* Without regard to FAR 14.404-1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273-70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used.

(c) The contracting officer shall insert the provision at 852.273-72, Alternative evaluation, in lieu of the provision at 52.212-2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212-2.

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273-74, Award without exchanges, in the RFQ or RFP.

(f) The contracting officer shall insert the clauses at FAR 52.207-3, Right of First Refusal of Employment, and at 852.207-70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of

resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (*e.g.*, past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein.

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* The procedures of FAR parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this part.

(d) *Multiphase acquisition technique—*

(1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a

notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition.

(e) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation tech-

niques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

873.112 Evaluation information.

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition.

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein.

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873.

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.

(e) *Improper exchanges.* Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24.

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time.

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.

(c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506.