Reconsideration, CS Docket No. 96–56, adopted March 25, 1998, and released March 27, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

Synopsis of the Order on Reconsideration

1. In the *Order on Reconsideration*, we address a petition filed by Network Affiliated Stations Alliance (''NASA'') with respect to the Commission's implementation of the television broadcast network and cable television cross ownership provisions of the Telecommunications Act of 1996 (''1996 Act'') in the Order Implementing sections 202(f), 202(i) and 301(i) of the Telecommunications Act of 1996 (''*Order*''). In the *Order on Reconsideration*, NASA's petition is denied.

2. Section 202(f)(1) of the 1996 Act directs the Commission to revise § 76.501 of its regulations (47 CFR 76.501) to permit a person or entity to own or control a network of broadcast stations and a cable system. Section 202(f)(2) further provides that the Commission shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system.

3. In the March 15, 1996 *Order*, 61 FR 15387, April 8, 1996, the Commission amended its cable television ownership rules under § 76.501 to conform them to changes mandated by the 1996 Act. Our rules have been modified to allow a person or entity to own or control a network of broadcast stations and a cable system. Although the *Order* did not implement additional rule changes regarding safeguards for nonaffiliated broadcast stations, it explained that the Commission would monitor the response to the rule changes to determine whether additional rules were necessary. Because the rule changes made pursuant to the 1996 Act merely conformed the rules to the statute, the Commission determined that it had good cause for concluding that the notice and comment provisions of the Administrative Procedure Act (''APA'') were not necessary.

4. NASA filed a petition for reconsideration of our *Order*. NASA contends that the Commission was obligated to provide notice and an opportunity to participate in the rulemaking proceeding.

5. We recognize that Congress, in section 202(f)(2) of the 1996 Act, directed the Commission to revise our rules, if necessary, to protect against possible anticompetitive behavior. Nothing in section 202(f)(2) mandates that the Commission withhold implementing the explicit directive of the statute. Section 202(f)(1) requires the Commission to revise its rules to allow network-cable cross ownership. It does not condition the implementation of this mandate on any particular finding or Commission rulemaking. The Commission had no discretion to forgo or to postpone this legislative directive. To the extent NASA seeks reconsideration of our decision to conform our rules to the statute, its petition is denied. 6. We also reject NASA's assertion that the Commission is obligated under the APA to conduct a formal rulemaking to determine whether safeguards are necessary at this time. We note that the explicit language of section 202(f)(2) of the 1996 Act calls for revision of our rules ''if necessary'' to ensure nondiscriminatory treatment of nonaffiliated broadcast stations by cable systems. The discretion to render the determination of necessity is placed squarely with the Commission and we have determined at this point that safeguards are not needed. Congress, in passing the 1996 Act, did not conclude that safeguards were immediately necessary and, as the Commission merely conforms its rules to the new statute, we reach a similar conclusion and elect to monitor the situation rather than to launch a full proceeding on this issue at this time. Combinations between major networks and cable operators have not yet been formed, nor does the record reflect specific examples of potential problems. Accordingly, we have concluded that safeguards are not necessary at this time. We do not believe this conclusion violates the APA. Although notice and comment is required when the Commission promulgates rules that establish or impose new obligations on private parties, our decision that safeguards are unnecessary at this time does not impose any additional obligations.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–9351 Filed 4–8–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 810, 811, 812, 836, 852 and 870

RIN 2900–AI05

VA Acquisition Regulations: Commercial Items

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) concerning the acquisition of commercial items. It amends VAAR provisions to conform to the Federal Acquisition Regulation (FAR), to delete obsolete references and titles, to update references and titles, to reorganize material and to remove obsolete material. This document also sets forth VAAR provisions and clauses for use by contracting officers for commercial item solicitations and contracts. These provisions and clauses are warranted for use in commercial item solicitations and contracts. This document also incorporates Paperwork Reduction Act approval concerning collection of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts.

DATES: Effective Date: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: On August 25, 1997, we published in the **Federal Register** (62 FR 44932) a proposal to amend the Department of Veterans Affairs Acquisition Regulations to make changes relating to the acquisition of commercial items. Comments were solicited concerning the proposal for 60 days, ending October 24, 1997. We did not receive any comments. The information presented in the proposed rule document still provides a basis for this final rule. In addition, the proposed rule requested Paperwork Reduction Act (PRA) comments concerning the collection of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts. No comments were received by the Office of Management and Budget (OMB). The reporting and recordkeeping requirements of the proposed rule have been approved by OMB; clearance numbers have been

assigned to the provisions and clauses contained therein. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect, at 48 CFR 801.301–70(c), the new PRA clearance numbers assigned by OMB, for correction to references made in 811.202(a), and for changes made in 811.202 to update the title for the Federal Hospital Subsistence Guide, which has been incorporated into the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, as Part IV.

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would have a minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects

48 CFR Parts 810, 811, and 812

Government procurement.

48 CFR Parts 801, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 870

Asbestos, Frozen foods, Government procurement, Telecommunications.

Approved: March 26, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

1. The authority citation for parts 801, 836, and 852 continues to read as follows:

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

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

801.301–70(c) [Amended]

2. In part 801, the chart contained in § 801.301–70(c) is revised to read as follows:

801.301–70 Paperwork Reduction Act requirements.

(c) * * *

* * * * *

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
852.219–70	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
852.236–81 through 852.236–85	2900–0422
852.236–88	2900–0422
852.237–71	2900–0590
852.270–03	2900–0589
871.201–2	2900–0416

PART 810 [REMOVED]

3. Under the authority of 38 U.S.C. 501 and 40 U.S.C. 486(c), Part 810 is removed.

4. Part 811 is added to read as follows:

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.

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).

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 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 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 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 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;

(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.

5. Part 812 is revised to read as follows:

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).

PART 812—ACQUISITION OF COMMERCIAL ITEMS

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 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:

(1) 852.211–71, Guarantee clause.

(2) 852.211–72, Inspection.

(3) 852.211–73, Frozen processed foods.

(4) 852.211–74, Telecommunications equipment.

(5) 852.211–75, Technical industry standards.

(6) 852.214–70, Caution to bidders—bid envelopes.

(7) 852.216–70, Estimated quantities for requirements contracts.

(8) 852.229–70, Purchases from patient's funds.

(9) 852.229–71, Purchases for patients using Government funds and/or personal funds of patients.

(10) 852.233–70, Protest content.

(11) 852.237–70, Contractor responsibilities.

(12) 852.237–71, Indemnification and insurance (vehicle and aircraft service contracts).

(13) 852.270–1, Representatives of contracting officers.

(14) 852.270–2, Bread and bakery products.

(15) 852.270–3, Purchase of shell fish.

(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.

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.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

836.202 [Amended]

6. In part 836, § 836.202(a) is amended by removing ''part 810'' and adding, in its place, ''part 811''.

836.206 [Amended]

7. In part 836, § 836.206 is amended by removing ''812.202'' and adding, in its place, ''811.502''; by removing ''852.212–70'' and adding, in its place, ''852.211–78''; and by removing ''52.212–5'' and adding, in its place, ''52.211–12''.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Part 852 is amended by redesignating the following sections as set forth below:

Old section	New section
852.210–70	852.211–70
852.210–71	852.211–71
852.210–72	852.211–72
852.210–73	852.211–73
852.210–74	852.211–74
852.210–75	852.211–75
852.210–76	852.211–76

852.210–77 [Redesignated as 852.211–77]

9. In part 852, § 852.210–77 is redesignated as § 852.211–77 and the introductory text is amended by removing ''810.004'' and adding, in its place, ''811.104''.

852.212–70 [Redesignated as 852.211–78]

10. In part 852, § 852.212–70 is redesignated as § 852.211–78, and the introductory text is amended by removing ''812.204'' and adding, in its place, ''811.504''.

852.219–70 [Amended]

11. In part 852, § 852.219–70 introductory text is amended by removing ''819.7003(a)'' and adding, in its place, ''819.7003(b)''.

852.229–70 [Amended]

12. In part 852, § 852.229–70 introductory text is amended by adding ''or, if the contract is for commercial items, in lieu of paragraph (k), Taxes, in FAR clause 52.212–4'' immediately after ''in FAR 52.229–1''.

852.229–71 [Amended]

13. In part 852, § 852.229–71 introductory text is amended by adding ''or, if the contract is for commercial items, as an addendum to FAR clause 52.212–4'' immediately after ''in FAR 52.229–1''.

852.271–70 [Amended]

14. In part 852, § 852.271–70 is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health''.

PART 870—SPECIAL PROCUREMENT CONTROLS

15. The authority citation for part 870 is revised to read as follows:

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

870.112 [Amended]

16. In part 870, § 870.112, paragraph (a) is amended by removing ''852.210–74'' and adding, in its place, ''852.211–74'', Footnote 1 is amended by removing ''Veterans Administration'' and adding, in its place, ''Department of Veterans Affairs'', paragraph (b) is amended by removing ''852.210–74'' and adding, in its place, ''852.211–74'', by removing ''the Office of Information Resources Operations'' and adding, in its place, ''Telecommunications Support Service''; by removing ''(93)'' each time it appears in paragraphs (b) and (c)(1) and adding, in its place, '', Acquisition Administration Team''.

[FR Doc. 98–9135 Filed 4–8–98; 8:45 am]

BILLING CODE 8320–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1843 and 1852

Suitable Adjustments Under Contracts for Construction, Dismantling, Demolishing, or Removing Improvements

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends NASA's Federal Acquisition Regulation Supplement (NFS) to set forth an agency-wide clause that may be used for equitable adjustments under contracts for construction, dismantling, demolishing, or removing improvements that are contemplated to be fixed-price and exceed the simplified acquisition threshold.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1997, a proposed rule to amend the NFS to establish an agency-wide clause to handle equitable adjustments under fixed-price contracts in excess of the simplified acquisition threshold for construction, dismantling, demolishing, or removing improvements was published in the **Federal Register** (62 FR 64545–64546) for comment. Comments were submitted by only one commenter who took exception to several aspects of the proposed rule. The comments were reviewed and considered; however, no changes were made to the proposed rule as a result of them.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1843 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1843 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1843 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1843—CONTRACT MODIFICATIONS

1843.205–70 [Amended]

2. In section 1843.205–70, the heading is revised, paragraphs (a), (b), and (c) are redesignated as (a)(1), (2), and (3), and a new paragraph (b) is added to read as follows:

1843.205–70 NASA contract clauses.

* * * * *

(b) The contracting officer may insert a clause substantially as stated at 1852.243–72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.243–70 [Amended]

3. In section 1852.243–70, introductory text, the prescription ''1843.205–70(a)'' is revised to read ''1843.205–70(a)(1)''.

4. In Alternate I to section 1852.243–70, the prescription ''1843.205–70(b)'' is revised to read ''1843.205–70(a)(2).

5. In Alternate II to section 1852.243–70, the prescription ''1843.205–70(c)'' is revised to read ''1843.205–70(a)(3)''.

6. Section 1852.243–72 is added to read as follows:

1852.243–72 Equitable Adjustments.

As prescribed in 1843.205–70(b), insert the following clause.

Equitable Adjustments April 1998

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the ''Suspension of Work'' clause (FAR 52.242–14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. ''Commission'' is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings: