

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.**

The clauses, entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented with the following two clauses. Both clauses shall be included in the contract. The clause in paragraph (a) of this section will apply to negotiated changes exceeding \$500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.505-5. When the negotiated change will be less than \$500,000 the clause specified in paragraph (b) of this section will apply. Proposals over \$100,000 and not exceeding \$500,000 shall be accompanied by certificates of current cost or pricing data. If cost and pricing data are required for proposals of \$100,000 or less, the contracting officer may require that it be certified in accordance with FAR 15.804-2(a)(2). It must be emphasized that the indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations. The clauses are a result of an approved FAR deviation pursuant to subpart 801.4.

(a) Applicable to changes costing over \$500,000:

CHANGES—SUPPLEMENT (FOR CHANGES COSTING OVER \$500,000) (JUNE 1987)

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted 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 15.804, the cost or pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6.

(b) 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 for cost of changes in work within 30 calendar days.

(c) 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.

(d) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of clause)

(b) Applicable to changes costing \$500,000 or less:

CHANGES—SUPPLEMENT (FOR CHANGES COSTING \$500,000 OR LESS) (JUNE 1987)

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted 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 15.804 for

proposals over \$100,000, the cost of pricing data shall be submitted on SF 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6. No itemized breakdown will be required for proposals amounting to less than \$1,000.

(b) 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 for cost of changes in work within 30 calendar days.

(c) 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.

(d) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7½ percent overhead and 7½ percent profit on the next \$30,000; 5 percent overhead and 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(e) 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.

(f) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(g) 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.

(h) 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 rea-

sonable 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.

(i) Cost of Federal Old Age Benefit (Social Security) tax and of Workmen'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.

(j) 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.

(k) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of clause)

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

#### **852.236-89 Buy American Act.**

The Buy American Act (41 U.S.C. 10a-d) 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 following "Special Notice" will be inserted into the bid package, in front of SF 20, Invitation for Bids:

BUY AMERICAN ACT (NOV 1984)

(a) Reference is made to the clause entitled "Buy American Construction Materials," FAR 52.225-5.

(b) Notwithstanding a bidder's right to offer identifiable foreign material in its bid pursuant to the above provisions, VA does