SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the Federal Register.

DATES: This rule is effective on April 18, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 2018, VA published a final rule.

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DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 825, 836, 842, 846, 852, and 853
REN 2900–AQ18

VA Acquisition Regulation: Construction and Architect-Engineer Contracts

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

Federal Register / Vol. 84, No. 53 / Tuesday, March 19, 2019 / Rules and Regulations

State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs
---|---|---|---|---
Walnut Grove, Town of, Etowah County | 010252 | June 25, 1975, Emerg; June 9, 1976, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Warrior, City of, Jefferson County | 010263 | May 12, 1975, Emerg; January 2, 1981, Reg; March 21, 2019, Susp. | ...do ............ | Do.
West Jefferson, Town of, Jefferson County | 010220 | N/A, Emerg; July 18, 2016, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Region VI
Arkansas:
Atkins, City of, Pope County | 050304 | August 7, 1975, Emerg; July 6, 1982, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Conway, City of, Faulkner County | 050078 | October 29, 1974, Emerg; March 18, 1980, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Faulkner County, Unincorporated Areas | 050431 | September 24, 1990, Emerg; September 27, 1991, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Lonoke County, Unincorporated Areas | 050448 | N/A, Emerg; March 14, 1994, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Menifee, Town of, Conway County | 050266 | N/A, Emerg; February 28, 2012, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Morriston, City of, Conway County | 050044 | June 6, 1975, Emerg; March 15, 1982, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Oppelo, City of, Conway County | 050597 | July 26, 1993, Emerg; July 4, 2011, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Plumerville, City of, Conway County | 050364 | September 15, 1983, Emerg; January 17, 1986, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Ward, City of, Lonoke County | 050032 | September 8, 1975, Emerg; September 5, 1978, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Wooster, City of, Faulkner County | 050302 | February 11, 1976, Emerg; September 27, 1991, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Texas:
Burleson, City of, Johnson and Tarrant Counties | 485459 | December 17, 1971, Emerg; November 2, 1973, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Dallas County, Unincorporated Areas | 480165 | September 4, 1970, Emerg; July 19, 1982, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Edgecliff Village, Town of, Tarrant County | 480592 | June 5, 1975, Emerg; August 19, 1986, Reg; March 21, 2019, Susp. | ...do ............ | Do.
Southlake, City of, Denton and Tarrant Counties | 480612 | September 30, 1974, Emerg; July 5, 1982, Reg; March 21, 2019, Susp. | ...do ............ | Do.
White Settlement, City of, Tarrant County | 480617 | May 13, 1975, Emerg; July 17, 1986, Reg; March 21, 2019, Susp. | ...do ............ | Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.
This final rule implements seven existing information collection requirements associated with four Office of Management and Budget (OMB) control number approvals. The actions in this rule result in multiple actions affecting some of these information collections, such as: The outright removal of the information collection; no change in information collection burdens although titles and number of the information collection would be slightly revised; or no change to the existing OMB control number and associated burden.


9969 Federal Register/Vol. 84, No. 53/Tuesday, March 19, 2019/Rules and Regulations

Technical Non-Substantive Change to the Proposed Rule

This final rule makes one technical non-substantive change to correct the amendatory instruction at 801.106 to remove the reference to 852.236–82 through 852.236–84, and its corresponding OMB Control Number. VA provided a 60-day comment period for the public to respond to the proposed rule. The comment period for the proposed rule ended on November 6, 2018 and VA received no comments. This final rule adopts as a final rule the proposed rule published in the Federal Register on September 7, 2018, with the technical non-substantive change noted above and other minor formatting and/or grammatical edits. This final rule has Federal Register administrative format changes in the amendatory text which make no substantive text changes at the affected sections.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal Governments or on the private sector.

Paperwork Reduction Act

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remains unchanged. However, this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The overall impact of the rule is of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA’s internal operating processes or procedures. VA estimates no cost impact to individual business will result from these rule updates. This rulemaking clarifies VA’s policy regarding the contracting order of priority for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) as a result of VA’s implementation of 38 U.S.C. 8127–8128 as a result of the U.S. Supreme Court’s decision in Kingdomware Technologies, Inc. vs. the United States, July 25, 2018, only as it pertains to the application of the VA Rule of Two to contracts for construction and architect-engineer contracts in accordance with Public Law 109–461 as codified at 38 U.S.C. 8127–8128. It does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this
basis, the final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines “significant regulatory action” to mean any regulatory action that is likely to result in a rule that may: “(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not be a significant regulatory action under E.O. 12866 because it does not raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. VA’s impact analysis can be found as a supporting document at http://www.regulations.gov, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s website at http://www.va.gov/orpm by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule’s economic analysis and in the PRA section below.

List of Subjects
48 CFR Part 801
Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 825
Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

48 CFR Parts 836 and 852
Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 842
Accounting, Government procurement.

48 CFR Parts 846 and 853
Government procurement.

Signing Authority
The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on January 8, 2019, for publication.

Dated: March 12, 2019.
Consuela Benjamin,
Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR, parts 801, 825, 836, 842, 846, 852, and 853 as follows:

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

1. The authority citation for part 801 continues to read as follows:


Subpart 801.1—Purpose, Authority, Issuance

801.106 [Amended]

2. In 801.106, under the table, columns titled “48 CFR part or section where identified and described” and “Current OMB control number”:

a. Remove the reference to 852.236–82 through 852.236–84 and 852.236–89 and the corresponding OMB Control Number 2900–0622.

b. Remove the reference to 852.236–91 and the corresponding OMB Control Number 2900–0623.

PART 825—FOREIGN ACQUISITION

3. The authority citation for part 825 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 825.2 [Removed and Reserved]

4. Subpart 825.2, consisting of sections 825.103 and 825.104, is removed and reserved.

Subpart 825.11 [Removed and Reserved]

5. Subpart 825.11, consisting of section 825.1102, is removed and reserved.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. The authority citation for part 836 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 1303(a)(2) and 1702; and 48 CFR 1.301–1.304.

Subpart 836.2—Special Aspects of Contracting for Construction

7. Section 836.202 is revised to read as follows:

836.202 Specifications.

8. Section 836.202–70 is added to read as follows:


Upon approval of the justification documentation required by FAR 11.105, Items peculiar to one manufacturer, the contracting officer shall include the clause found at 852.236–90, Restriction on Submission and Use of Equal Products, in solicitations and contracts. The contracting officer shall complete the clause by inserting the items which have been approved for restriction to a brand name. This clause also places offerors or bidders on notice that the “brand name” provisions of any clause or provision that may authorize the submission of an “equal” product, shall not apply to the specific items listed in clause 852.236–90.
9. Section is revised to read as follows:

836.203 Government estimate of construction costs.

10. Section 836.203–70 is added to read as follows:

836.203–70 Protection of the independent government estimate—sealed bid.

For sealed bid acquisitions the contracting officer or bid custodian is not authorized to release the basis for calculating the estimate at any time. The person preparing the independent government estimate (IGE) shall—
(a) Designate the IGE as “For Official Use Only (FOUO)”;
(b) The contracting officer or bid custodian shall file a sealed copy of the IGE with the bids. (In the case of two-step acquisitions, the contracting officer or bid custodian accomplishes this during the second step);
(c) After the bids are read and recorded during a Public Bid Opening, remove the “For Official Use Only (FOUO)” designation then read and record the estimate as if it were a bid, in the same detail as the bids; and
(d) In instances where only one bid has been received, the government estimate shall not be read by the contracting officer as it may be needed to conduct negotiations with the offeror.

11. Section 836.204 is revised to read as follows:

836.204 Disclosure of the magnitude of construction projects.

The contracting officer shall utilize the estimated price ranges defined in FAR 36.204(a) through (e) as further supplemented below when identifying the magnitude of a VA project in advance notices and solicitations:
(f) For estimated price ranges between $1,000,000 and $5,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of the following price ranges:
(1) Between $1,000,000 and $2,000,000;
(2) Between $2,000,000 and $5,000,000;
(g) Between $5,000,000 and $10,000,000;
(h) For estimated price ranges greater than $10,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:
(1) Between $10,000,000 and $20,000,000;
(2) Between $20,000,000 and $50,000,000;
(3) Between $50,000,000 and $100,000,000.
(4) Between $100,000,000 and $150,000,000;
(5) Between $150,000,000 and $200,000,000;
(6) Between $200,000,000 and $250,000,000;
(7) More than $250,000,000.

836.206 [Removed]

12. Section 836.206 is removed.

836.209 [Removed]

13. Section 836.209 is removed.

836.213, 836.213–4, and 836.213–70 [Removed]


Subpart 836.5—Contract Clauses

15. Section 836.500 is revised to read as follows:

836.500 Scope of subpart.

The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those prescribed in FAR subpart 36.5.

16. Section 836.501 is revised to read as follows:

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, except those awarded pursuant to subpart 819.70. When the solicitations or contracts include a section entitled “Network Analysis System (NAS),” the contracting officer shall use the clause with its Alternate I.

836.513 [Removed]

17. Section 836.513 is removed.

18. Section 836.521 is revised to read as follows:

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 include the FAR clause at 52.236–21, Specifications and Drawings for Construction.

836.570 [Removed]

19. Section 836.570 is removed.

836.571 [Removed]

20. Section 836.571 is removed.

836.572 [Removed]

21. Section 836.572 is removed.

836.573 Contractor production report.

The contracting officer shall insert the clause at 852.236–79, Contractor Production Report, 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.

22. Section 836.573 is revised to read as follows:

836.574 Subcontracts and work coordination.

The contracting officer shall insert the clause at 852.236–80, Subcontracts and Work Coordination, in invitations for bids and contracts for construction expected to exceed the micro-purchase threshold for construction. 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.

836.575 [Removed]

24. Section 836.575 is removed.

836.576 [Removed]

25. Section 836.576 is removed.

836.577 [Removed]

26. Section 836.577 is removed.

836.579 [Removed]

27. Section 836.579 is removed.

28. Section 836.580 is added to read as follows:

836.580 Notice to bidders—additive or deductive bid line items.

The contracting officer may include the provision 852.236–92, Notice to Bidders—Additive or Deductive Bid Line Items, in invitations for bids when the contracting officer determines that funds may not be available for all the desired construction features at contract award.

Subpart 836.6—Architect-Engineer Services

836.602, 836.602–1, 836.602–2, 836.602–4, and 836.602–5 [Removed]

29. Sections 836.602, 836.602–1, 836.602–2, 836.602–4, and 836.602–5 are removed.
30. Section 836.603 is revised to read as follows:

836.603 Collecting data on and appraising firms’ qualifications.

The Associate Executive Director, Office of Facilities Engineering, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration; the Senior Executive Service (SES) official for Administration and Facilities for Veterans Benefits Administration; the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 330 and maintaining a data file on architect-engineer qualifications.

31. Sections 836.606, 86.606–70, and 86.606–71 are revised to read as follows:

836.606 Negotiations.

836.606–70 Architect-engineer firms’ proposal.

(a) When the contract price is estimated to be $50,000 or more, the contracting officer shall use VA Form 6298, Architect-Engineer Fee Proposal, to obtain the proposal and supporting cost data from the proposed contractor and subcontractor in the negotiation of an A–E contract for design services.

(b) In obtaining A–E services for research study, seismic study, master planning study, construction management and other related services contracts, the contracting officer shall use VA Form 6298, supplemented or modified as needed for the particular project type.

836.606–71 Application of 6 percent architect-engineer fee limitation.

(a) The production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction. Other A–E fees are not included in this 6 percent. Such fees are delineated in reference (c) below.

(b) The 6 percent limit also applies to contract modifications, including modifications involving:

(1) Work not initially included in the contract. Apply the 6 percent limit to the revised total estimated construction cost.

(2) Redesign. Apply the 6 percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the 6 percent statutory limitation.

(c) 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.;

(vii) Environmental services;

(viii) Geo-Tech studies; and

(ix) Feasibility studies.

(b) VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services) may be used for ordering supplies or services, including task orders for Construction or A–E services, to include dismantling, demolition, or removal of improvements.

(c) VA Form 10101, Contractor Production Report (see 853.236–72). Contractors may use VA Form 10101, Contractor Production Report or a contractor generated form containing the same type of information contained in the form, as required by 836.573 which prescribes the clause at 853.236–79, Contractor Production Report.

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

34. The authority citation for part 842 is amended to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

35. Subpart 842.2, consisting of section 842.271, is added to read as follows:

Subpart 842.2—Contract Administration Services

842.271 Contract clause for Government construction contract administration.

The contracting officer shall insert the clause at 852.242–70, Government Construction Contract Administration, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction.

PART 846—QUALITY ASSURANCE

36. The authority citation for part 846 is revised to read as follows:
846.312 [Removed]  
37. Section 846.312 is removed.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

38. The authority citation for part 852 continues to read as follows:


40. Section 852.236–72 is revised to read as follows:

Performance of Work by the Contractor.  
As prescribed in 836.501, insert the following clause:

Performance of Work by the Contractor (Apr 2019)  
(a) In accordance with FAR 52.236–1, the contract work accomplished on the site by laborers, mechanics, and foremen/superintendent on the Contractor’s payroll and under their direct supervision shall be used 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 the Contractor’s executive, administrative 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 portions of contract work to be performed with the Contractor’s own forces. The approved schedule of costs will be used in determining the value of a work activity/event, or portions thereof, of the work for the purpose of this article.

(c) Changes to established activity/event identifiers or responsibility codes for Contractor activities shall not be made without approval from the Contracting Officer.

(d) In the event the Contractor fails to comply with FAR 52.236–1, Performance of Work by the Contractor, the Contracting Officer will withhold retention in the amount of 15% of the value of any work activity/element being invoiced that was not authorized by the Contracting Officer to be performed by someone other than the prime Contractor’s own workforce.

(End of clause)  
Alternate I (APR 2019). For requirements which include a Network Analysis System (NAS), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01310 or 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.

852.236–77 [Removed and Reserved]  
43. Section 852.236–77 is removed and reserved.

852.236–78 [Removed and Reserved]  
44. Section 852.236–78 is removed and reserved.

45. Section 852.236–79 is revised to read as follows:

Contractor Production Report.  
As prescribed in 836.573, insert the following clause:

Contractor Production Report (Apr 2019)  
(a) The Contractor shall furnish to the resident engineer, for each workday, a consolidated report for the preceding workday. Reporting shall begin from date of mobilization until the date of final acceptance except for authorized holidays. VA Form 10101, Contractor Production Report, or a Contractor generated form containing the same type of information shall be signed, dated and submitted by the Contractor superintendent.

(b) Each report shall include and specifically identify at least one safety topic germane to the jobsite that day.

(End of clause)  
46. Section 852.236–80 is revised to read as follows:

Subcontracts and Work Coordination.  
As prescribed in 836.574, insert the following clause:

Subcontracts and Work Coordination (Apr 2019)  
(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 may 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 or subcontractor employee 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, careless, or otherwise objectionable.

(End of clause)  
Alternate I (APR 2019). 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 two 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 clearly show the manner in which 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.

852.236–84 [Removed and Reserved]

§ 47. Section 852.236–84 is removed and reserved.

852.236–85 [Removed and Reserved]

§ 48. Section 852.236–85 is removed and reserved.

852.236–86 [Removed and Reserved]

§ 49. Section 852.236–86 is removed and reserved.

852.236–87 [Removed and Reserved]

§ 50. Section 852.236–87 is removed and reserved.

852.236–89 [Removed and Reserved]

§ 51. Section 852.236–89 is removed and reserved.

§ 52. Section 852.236–90 is revised to read as follows:

852.236–90 Restriction on Submission and Use of Equal Products.

As prescribed in 836.580, insert the following provision:

Notice to Bidders—Additive or Deductive Bid Line Items.

As prescribed in 836.580, insert the following provision:

852.236–91 [Removed and Reserved]

§ 53. Section 852.236–91 is removed and reserved.

§ 54. Section 852.236–92 is added as follows:

852.236–92 Notice to Bidders—Additive or Deductive Bid Line Items.

As prescribed in 836.580, insert the following provision:

Notice to Bidders—Additive or Deductive Bid Line Items (Apr 2019)

(a) Additive or deductive line items in the bid schedule shall be evaluated to determine the low offeror and the items to be awarded. The evaluation shall be made as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low bid shall be the Bidder that—

(i) is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base line item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive line items that provide the most features within the funds determined available.

(3) All bids shall be evaluated on the basis of the same additive or deductive line items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that line item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror’s price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) Example: “The amount available is $100,000. Offeror A’s base bid and four additives (in the order stated in the list of priorities in the bid schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B’s base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror B’s bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.”

(End of provision)

§ 55. Section 852.242–70 is added as follows:


As prescribed in 842.271, insert the following clause. This is a fill-in clause.
Subpart 853.2—Prescription of Forms

58. Sections 853.236 and 853.236–70 are revised to read as follows:

853.236 Construction and architect-engineer proposals.

853.236–70 VA Form 6298, Architect-Engineer Fee Proposal. 
See 836.7001(a).

59. Sections 836.236–71 and 853.236–72 are added to read as follows:

853.236–71 VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A–E Services). See 836.7001(b).

853.236–72 VA Form 10101, Contractor Engineer Fee Proposal. See 836.7001(c).

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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 679
[Docket No. 180713633–9174–02]
RIN 0648–XG847

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Community Development Quota (CDQ) pollock directed fishing allowances (DFA) from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2019 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 19, 2019, until the effective date of the final 2019 and 2020 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the Federal Register.


SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2019 pollock total allowable catch (TAC) allocated to the CDQ DFA is 1,900 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019). As of March 13, 2019, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(4), NMFS reallocates 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the 2019 Bering Sea subarea. The 1,900 mt of pollock CDQ DFA is added to the 2019 Bering Sea CDQ DFA. The 2019 Bering Sea subarea pollock incidental catch allowance remains at 46,520 mt. As a result, the 2019 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) are revised as follows: 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 4 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised to make 2019 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2019 CDQ pollock allocation established at § 679.20(a)(5).