VETERANS AFFAIRS ACQUISITION MANUAL

2018 EDITION

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(Numbered to comport with eCFR 48 CFR Chapter 8)

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M803.101-1 General.

Department of Veterans Affairs (VA) core values and characteristics serve as the foundation for the way VA employees should interact with each other, as well as with people outside the organization, articulate what VA stands for, and underscore its moral obligation to veterans, their families, and other beneficiaries. They are intended to establish one overarching set of guidelines that apply to all VA Administrations and staff offices, confirming the values already instilled in many VA employees and enforcing their commitment to provide the best service possible to veterans, their families, and their caretakers.

M803.101-3 Agency regulations.

Part 0 of 38 Code of Federal Regulations (CFR) states the standards of conduct for all VA employees, including contracting officials. Subpart C of 38 CFR part 0 contains the employee financial disclosure.

M803.101-70 Department of Veterans Affairs Designated Agency Ethics Officials.

(a) For VA Central Office (VACO) use email GovernmentEthics@va.gov VACO’s Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official.

(b) Designated Deputy Agency Ethics Official Outside VACO:

Use email address OGCNorthEastEthics@va.gov to contact Deputy Agency Ethics Official servicing Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Ohio, West Virginia, Michigan and Wisconsin.

Use email address OGCSouthEastEthics@va.gov to contact Deputy Agency Ethics Official servicing Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, Southern Texas and Puerto Rico.
Use email address OGCMidwestEthics@va.gov to contact Deputy Agency Ethics Official servicing the District of Columbia, Maryland, Indiana, Kentucky, Tennessee, Arkansas, Missouri, Illinois, Iowa, Minnesota, North Dakota, South Dakota, Nebraska and Kansas.

Use email address OGCWestEthics@va.gov to contact Deputy Agency Ethics Official servicing Northern Texas, Oklahoma, New Mexico, Arizona, Colorado, Utah, Wyoming, Montana, Idaho, Nevada, California, Oregon, Washington, Hawaii, Alaska, Guam and Philippines.

In addition, Ethics team contact information can be obtained at this website: http://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf

M803.104 Procurement Integrity.

M803.104-4 Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information.

(a) Authorized access to contractor bid or proposal information, and source selection information.

(1) The following persons may access contractor bid or proposal information and source selection information to accomplish their responsibilities in a procurement action:

(i) Requirements generators, including client agency representatives, and program and technical experts who develop statements of work, specifications or similar documents;

(ii) Contracting personnel supporting the contracting officer;

(iii) Personnel serving on technical evaluation boards or source selection evaluation boards;

(iv) Supervisors in the contracting officer’s chain of command;

(v) Secretarial, clerical and administrative personnel of the contracting activity responsible for the procurement;

(vi) Small Business Technical Advisors;

(vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under FAR 19.302, process applications for Certificates of Competency under FAR 19.6, review subcontracting plans, or award contracts under the 8(a) program;
(viii) Credit and finance personnel who support the contracting officer in making contractor responsibility determinations;


(x) Department of Labor (DOL) personnel who process preaward EEO clearances under FAR 22.805;

(xi) Attorneys in the Office of General Counsel (OGC) and supporting legal counsel's offices; and

(xii) Personnel involved in contract approval.

(2) The Senior Procurement Executive may authorize additional persons access to contractor bid or proposal information or source selection information.

(3) The contracting officer may authorize access to contractor bid or proposal information or source selection information if necessary to conduct the procurement. This includes release of information to outside evaluators under FAR 9.505-4 and 37.204. Limit access to only that information the person needs to do their job.

(b) Procedures for marking and protecting information. Anyone who prepares, makes, or controls contractor bid or proposal information and source selection information shall:

(1) Mark each page of the documents as prescribed in FAR 3.104-4(c).

(2) Provide physical security for documents in the office environment during, and after, duty hours.

(3) Secure interoffice mailing of documents by using opaque envelopes, “double wrapping” with more than one envelope, and sealing envelopes securely.

(4) Maintain strict control over oral communications about the acquisition.
M803.104-7 Violations or possible violations.

(a) (1) A contracting officer who receives or obtains information of a violation or possible violation of the Procurement Integrity Act shall forward the information and documentation supporting a determination whether or not there is an impact on the procurement to the head of the contracting activity (HCA). In consultation with OGC, the HCA may make the determination and concurrence to proceed with the award as specified in FAR 3.104-7(a)(1).

(b) If the HCA, after reviewing the contracting officer’s recommendation in (a)(1) of this subsection, determines that the violation or possible violation impacts the procurement, the HCA shall, take one of the following actions:

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation by reporting violations or possible violations to the VA Office of the Inspector General;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that a determination under FAR 3.104-7(b)(5) be made that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

The authority to make the determination in (b)(5) is delegated to the Senior Procurement Executive (SPE) and is further delegated to the Deputy Senior Procurement Executive (DSPE).

(c) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see FAR 3.104-3), the HCA, in coordination with legal counsel, shall take appropriate action described in FAR 3.104-7(b)(1), (2), (3), or (4), such as:

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or
(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(d)(2)(ii)(B) The authority to make the determination in 3.104-7(d)(2)(ii)(B) to void or rescind a contract for violation of the Procurement Integrity Act is delegated to the HCA.

(3) The agency Suspension and Debarment Official (SDO) is the DSPE (see 802.101).

(f) As provided in FAR 3.104-7(f), if the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.

Subpart M803.2—Contractor Gratuities to Government Personnel

M803.203 Reporting suspected violations of the Gratuities clause.

(a) VA employees shall report suspected violations of the Gratuities clause, 52.203-3, through the contracting officer to the HCA.

(b) (1) The report shall identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(2) The HCA, in coordination with the supporting legal counsel, shall confirm whether the violation is evident and, if confirmed, report the violations to the SDO.

M803.204 Treatment of violations.

The DSPE is the Suspending and Debarring Official (SDO) designated to make the determination under FAR 3.204(a). The SDO, with the review and concurrence of OGC, shall make the final determination of whether or not a violation has occurred and shall advise the HCA of the decision and the actions to take under FAR 3.204(c).

(b) The Suspension and Debarment Committee (S&D) and SDO shall follow procedures in VAAR 809.406-3 when debarment is being considered.

(c)(3) The authority to assess exemplary damages under a contract that uses money appropriated to the Department of Defense is delegated to the SDO.
Subpart M803.3—Reports of Suspected Antitrust Violations

M803.303 Reporting suspected antitrust violations.

(a) Any VA employee who suspects or has evidence of possible antitrust violations shall report the suspected violations, in accordance with FAR 3.303, to the VA Office of the Inspector General and to the Deputy Senior Procurement Executive (DSPE) for review and submission to OGC. The OGC in coordination with the Office of Inspector General shall determine whether to refer suspected fraudulent or criminal matters to the U.S. Attorney General.

Subpart M803.4—Contingent Fees

M803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees, shall report the matter to the contracting officer. The contracting officer, in accordance with HCA procedures, shall report a suspected or actual misrepresentation or violation to the Deputy Senior Procurement Executive (DSPE).

(b) Before taking any administrative action under FAR 3.405, the contracting officer shall consult with OGC or supporting legal Counsel.

(4) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under FAR 3.405(b)(4) through supporting legal Counsel or OGC, or the VA Office of the Inspector General, with a copy to the DSPE. Counsel or the Inspector General shall determine whether to forward the referral to the Department of Justice.

Subpart M803.5—Other Improper Business Practices

M803.502 Subcontractor kickbacks.

A VA employee who suspects a violation of the Anti-kickback Act shall report the suspected violation to the contracting officer and to OGC.
Subpart M803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

M803.602 Exceptions.

The authority to authorize an exception to the policy in FAR 3.601 is delegated to the Senior Procurement Executive (SPE)/Deputy Senior Procurement Executive (DSPE).

Subpart M803.7—Voiding and Rescinding Contracts

M803.703 Authority.

(a) The authority to void or rescind contracts is delegated to the HCA.

(b)(2) The authority to make the determination at FAR 3.703(b)(2) is delegated to the HCA.

M803.704 Policy.

(a) The authority in FAR 3.704(c) to void and rescind contracts, and to initiate suspension or debarment proceedings is delegated to the HCA.

M803.705 Procedures.

(c) In making a determination required at M803.703(b), to void or rescind a contract, the HCA shall follow the procedures of FAR 3.705.

Subpart M803.8—Limitations on the Payment of Funds to Influence Federal Transactions

M803.804 Policy.

A contracting officer shall forward a copy of all contractor disclosures furnished under the clause at FAR 52.203-12, Limitations on Payments to Influence Certain Federal-Transactions, to the Senior Procurement Executive (SPE)/ Deputy Senior Procurement Executive (DSPE) for subsequent submission by the Secretary to Congress.

M803.806 Processing suspected violations.

VA employees shall report suspected violations of 31 U.S.C. 1352, Limitation on Use of Appropriated Funds to Influence Certain Federal

**Subpart M803.9—Whistleblower Protections for Contractor Employees**

**M803.905 Procedures for Investigating Complaints.**

The Deputy Senior Procurement Executive (DSPE) is the agency’s designee for actions required under FAR 3.905 (b), (c), (d) and (e).

**M803.906 Remedies.**

The DSPE is the agency’s designee for actions required under FAR 3.906.

**M803.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).**

**M803.907-3 Procedures for filing complaints.**

(c) A contracting officer who receives a complaint of reprisal of the type described in FAR 3.907–2 shall forward it to the Office of Inspector General in accordance with HCA procedures.

**M803.907-6 Remedies and Enforcement Authority.**

(d) The DSPE is the agency’s designee for actions required under FAR 3.907-6.

**M803.908 Pilot program for enhancement of contractor employee whistleblower protections.** [Reserved]

**Subpart M803.10—Contractor Code of Business Ethics and Conduct**

**M803.1003 Requirements.**

(b) **Notification of possible contractor violation.** Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), the contracting officer shall, in accordance with HCA procedures, coordinate the matter with the supporting OGC and Office of Inspector General.

(c) When using FAR clause 52.203-14, Display of Hotline Poster(s), the contracting officer shall insert the following information in paragraph (b)(3):
Department of Veterans Affairs  
VA Inspector General Hotline (53E)  
810 Vermont Ave., NW  
Washington, DC 20420  

E-mail vaoighotline@va.gov  
FAX (202) 495-5861  

The Contractor may download the VA Inspector General Hotline Poster from the following website: http://www.va.gov/oig/pubs/20130625-hotline-poster.pdf.

**Subpart M803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

**M803.1103 Procedures.**

(a) The contracting officer shall use the “VA Contractor Non-Disclosure Agreement” in Attachment 1 when a contractor’s employees, or employees of a subcontractor of any tier, are required to sign a non-disclosure agreement in accordance with FAR 3.1103(a)(2)(iii).
APPENDIX M803-A

VA CONTRACTOR NON-DISCLOSURE AGREEMENT (“AGREEMENT”)

I, ________________________________________________, am an employee of, or an employee of a subcontractor to, ____________________ ______(Business Name), a contractor to the Department of Veterans Affairs (VA) under Contract no. _________________, through Delivery Order No. (As applicable) _____.

General Provision

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of the violation of any law, rule, or regulation; of mismanagement, a gross waste of funds, or abuse of authority; or of a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.

Specific Provisions

I understand that, in my performance under this contract, I may have access to, or otherwise receive, sensitive or proprietary business, technical, financial, and /or source selection information belonging to the Government or other contractors. This information includes, but is not limited to cost or pricing data, government spending plan data, contractor technical proposal data, contractor trade secrets, independent government cost estimates, proposal evaluation and source selection information, negotiation strategies and contractor data presented in negotiations, contracting plans, and statements of work. I agree not to discuss, divulge, or disclose any such information or data to any person or entity, except those persons directly concerned with the performance of this contract and/or delivery order. I acknowledge that the unauthorized disclosure, use, or negligent handling of the information by me could cause irreparable injury to the owner of the information.

As used in this Agreement, sensitive information is an overarching term that also includes, but is not limited to, sensitive but unclassified information/data, protected health information, information or data marked “For Official Use Only,” and privacy information. This includes information in routine VA payroll, finance, logistics, inventory, and personnel management systems. The loss of, misuse of, unauthorized access to, or modification of this information could adversely affect the national interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a, as amended, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.
I attest that I am aware of, and will comply with, the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access as cited in the Agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand that the United States Government may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. Court costs and reasonable attorney fees incurred by the United States Government may be assessed against me if I lose such action. I understand that another business entity might file a separate claim against me if I lose such action.

Proprietary information/data and sensitive information and data will be handled in accordance with Government regulations. The Statute of Limitation is indefinite for the unauthorized release of sensitive information.

This Agreement shall continue in force for a term of one (1) year from the date upon which I last have access to the information therefrom.

In the event that I seek other employment, I will reveal to any prospective employer the continuing obligation under this Agreement prior to accepting any employment offer.

The obligations herein do not extend to information/data which:
(a) Is in the public domain at the time of receipt or came into public domain through no act of mine;
(b) Is disclosed with the prior written approval of the DVA designated contracting officer;
(c) Is demonstrated to have been developed by ____________________________ (Business Name) or me independently of disclosures made hereunder; and
(d) Is disclosed pursuant to court order, after notification to the VA designated contracting officer.

I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction.

Printed Name of Employee or Subcontractor Employee

Signature of Employee or Subcontractor Employee

Witness Signature

Date

Business Entity

Date
SUBCHAPTER B—ACQUISITION PLANNING

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M811.103  Market acceptance.

(a) FAR 11.103 provides that the head of an agency may, under appropriate circumstances, require offerors to demonstrate if items offered are commercial market acceptable. The Department of Veterans Affairs (VA) delegates to the head of the contracting activity (HCA), who may re-delegate to the contracting officer, to determine if items offered are commercial market acceptable. The contracting officer shall determine if there are appropriate circumstances to require offerors to demonstrate that the items offered have achieved commercial market acceptance as provided in FAR 11.103.

M811.105-70 Multiple laboratory sources.

When soliciting for laboratory services, the contracting officer shall not specify a label or certificate of a single laboratory if there are multiple laboratory sources.

Subpart M811.2—Using and Maintaining Requirements Documents

M811.204-70 Contract clause.

The contracting officer shall use the clause 852.211-72, Technical Industry Standards, as prescribed in 811.204-70. The contracting officer shall either furnish the requirements documents with the solicitation or include instructions for obtaining or examining the documents and shall use in conjunction with the appropriate clause at—

(a) FAR 52.211-1, Availability of Specifications, Listed in the GSA Index of Federal Specifications, Standards and Commercial item Descriptions (as prescribed at FAR 11.204 (a));

(b) FAR 52.211-3, Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial item Descriptions (as prescribed at FAR 11.204 (c)); or

(c) FAR 52.211-4 (as prescribed at FAR 11.204 (d)), Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
Subpart M811.6—Priorities and Allocations

M811.602-70 General parameters for VA participation.

Priorities and allocations of critical materials, services and facilities under the Defense Priorities and Allocations System (DPAS) are administered by the United States Department of Commerce. As stated in FAR 11.602, DPAS provides for preferential acceptance and performance of contracts and orders for certain approved programs. Within the VA, only those programs or projects having a direct connection with supporting certain approved national defense or energy programs may be considered for such preferences and the priorities and allocation authorities permitted under DPAS. VA is not authorized to assign a priority rating for critical materials.

M811.603 Procedures.

(b) When the VA determines through its acquisition process that critical materials, services and facilities in support of programs are required and it is not feasible to use a substitute material, services or facilities, the Commerce Department has agreed to assist the VA in obtaining a priority rating.

(e) When a need to obtain a priority for critical materials, services, or facilities has been established, the contracting officer shall submit a request to the HCA and to the Deputy Senior Procurement Executive (DSPE) addressing the following:

(1) A description of the program, project or the new item, service or facility.

(2) The critical material, service or facility needed and the quantity 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 VA contract or purchase order number, the contractor’s purchase order number, and the delivery time requirement as stated in the solicitation or offer.

(5) The time the contractor proposes is necessary to deliver the materials if priority is not granted.

(6) The nature and extent of the need, emergency or other exigency, e.g.:

   (i) Damage to the physical plant.

   (ii) Impairment of the patient care program.
(iii) Creation of safety hazards.

(iv) Any other pertinent condition that could result because of failure to secure assistance in obtaining the critical materials, services or facilities in support of approved national defense or energy programs as stated in FAR 11.602.

Subpart M811.70—Special Requirements

M811.7001 Definition.

(a) The Department of Veterans Affairs (VA) shall use the definition of “conference” included in the Federal Travel Regulation (FTR): “meeting, retreat, seminar, symposium or event that involves attendee travel. Additionally, training activities are considered conferences under 5 CFR 410.404.”

(b) Specifically for VA, conferences include training sessions, meetings, advisory committee meetings or similar events where travel is involved and that are VA hosted or co-hosted, or where other Federal or non-Federal entities host, without regard to number of attendees or dollar value.

M811.7002 Contracting for conferences.

(a) Compliance with VA conference planning, execution, reporting and oversight policy and procedures. When contracting for conference or training facilities, contracting officers shall review all VA Conference Policies and procedures found at the VA Conference Resource Homepage, and comply with VA Financial Policy, Volume XIV, Travel, Chapter 10, Conference Planning, Oversight, and Reporting, dated May 24, 2018 and the FTR 41 CFR 301-74, Conference Planning.

(b) Policy.

(1) A warranted contracting officer will be responsible for the acquisition of services and supplies over the micro-purchase threshold to ensure acquisitions in support of conferences are planned and managed in accordance with the FAR.

(2) Ensure VA does not solicit lodging accommodation upgrades as part of contracts. The contracting officer must obtain a technical review of all proposed contracts with hotels or similar facilities for conferences where VA’s cost may exceed $25,000.

(3) Ensure VA does not incur expenditures for the use of entertainment (videos, music, etc.), motivational speakers, the purchase of promotional items, or embossing, or otherwise imprinting the name of the organization or conference on any supplies,
mementos, or other handouts. Reference Vol II, Ch. 4, “Awards, Ceremonies, Food or Refreshments, Gifts or Mementos”.

(4) Ensure the contracting officer or government purchase cardholder makes all purchases within the limits of their individual authority, and only authorized contracting personnel may make commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of a contract.

(5) Ensure purchases are made with appropriate approval. Reference VA Financial Policy, Volume XVI Ch. 1A, Government Actions for Purchase Card, and Ch. 1B, Government Purchase for Micro-Purchases, regarding the cardholder’s responsibilities (i.e. prohibiting split payment of a single requirement), and the approving official’s responsibility to certify all transactions made by cardholders, and to ensure applicable documentation is maintained in accordance with Section 100505 in this chapter.

(6) Nominate a qualified contracting officer’s representative (COR) for conferences.

(7) Checking the Hotel and Motel National Master List. The Hotel and Motel Fire Safety Act of 1990 codified at 15 U.S.C. 2225 prohibits use of appropriated funds to sponsor or pay for, in whole or in part, a meeting, convention, conference or training seminar in a hotel or other place of public accommodation, unless the venue meets the fire prevention and control guidelines described in 15 U.S.C.1225. The Federal Emergency Management Agency (FEMA), United States Fire Administration (USFA) maintains the Hotel and Motel National Master List, a list of hotels and motels complying with Pub. L. 101-391. Contracting officers and purchase card holders shall contract only with listed hotels or motels to conduct meetings, conventions, conferences, or training seminars. Any advertisement, request for quotation, invitation for bid, or announcement for space shall include a requirement that the proposed facility be listed on USFA’s Hotel and Motel National Master List at http://apps.usfa.fema.gov/hotel/.
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M814.407-3  Other mistakes disclosed before award.
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M814.000 Scope of part.

This part establishes procedures, and provides guidance and instructions when contracting for supplies, services, and construction by sealed bidding.

M814.001-70 Definitions.

“Line item”, as defined by FAR 3.302, means an item of supply or service, specified in a solicitation, that the offeror must separately price.

Subpart M814.2—Solicitation of Bids

M814.201 Preparation of invitations for bids.

M814.201-2 Part I—The Schedule.

(a) When using Standard Form 33, Solicitation, Offer and Award, the contracting officer should include the following cautionary notice in the contract Schedule:

“Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this invitation for bid[s] sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause. EXAMPLE: If you insert “NET 20” not offering a prompt payment discount in Item 13, the contracting officer will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.”

(b) When using other authorized forms (e.g., Standard Form 1447, Solicitation/Contract; Standard Form 1449, Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

M814.202-4 Bid samples.

(a) Policy. The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics, but the contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list “Subjective Characteristics” and “Objective Characteristics.” The contracting officer shall explain the rationale to request bid samples in the file documentation.

M814.202-5 Descriptive literature.

When using brand name or equal purchase descriptions, the provision at FAR 52.211-6(b)(3), Brand Name of Equal (AUG 1999), satisfies the requirement for descriptive literature. Additional descriptive literature is unnecessary and should not be requested.

M814.204 Records of invitations for bids and records of bids.

(b) Maintenance of the contract file prescribed by FAR part 4 and VAAR part 804 and retention of canceled IFB files will fulfill the requirements set forth in FAR 14.204(b).

M814.211-70 Release of acquisition information.

(a) Before award. The contracting officer and all members of the acquisition team shall limit access to information concerning the Government cost estimate to—

(1) Government personnel whose official duties require knowledge of the estimate and who have signed a non-disclosure statement; and,

(2) Non-Government personnel with a need to know and who have signed a non-disclosure agreement (contracting officers may tailor the non-disclosure agreement for these purposes).
(b) No employee of VA may disclose information as to probable acceptance or rejection of any bid to any bidder or other person outside of VA, except as authorized by the FAR.

**M814.270 Alternative bid items—supply and services.**

(a) When an IFB for supplies or services contain alternative bid items the IFB shall contain a statement on the order of priority in which the contracting officer will award any alternative bid items, based on the relative importance of the item and the amount of funds available.

(b) A price schedule containing alternative bid items may be used when the both of the following apply:

1. VA intends to make a single aggregate award for all items in the IFB within certain fiscal limitations, and
2. The IFBs solicits prices on an item and alternate item basis.

(c) The following is an example of a price schedule that includes a base item, a SubCLIN 0001AA and alternate bid items SubCLINs 0002AA and 0002AB:

**Basis for award.** Only one contract will be awarded as a result of this solicitation. A single award will be made on CLIN 0001 SubCLIN 0001AA, but in the event the bid exceeds funds made available for award, award will be made on Alternate bid Item CLIN 0002 SubCLIN 0002AA or 0002AB, in that order, if sufficient funds are available for award. Award of an award group will be made on an “All or None” basis.

0001

Custodial Services IAW

PWS: _______

Dated: _____.

Unit consisting of 24 pages of Unit
(Including cover) Extended

0001AA: Award Group A

Custodial Services

Buildings 1, 2 and 3

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Issue</th>
<th>Price</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Mo.</td>
<td>$_____</td>
<td>$_______</td>
</tr>
</tbody>
</table>

0002 Alternate Bid Items

In order of priority.

0002AA: Award Group B

Custodial Services
Buildings 1 and 2  12  Mo.  $_______  $_______

0002AB: Award Group C
Custodial Services-
Building 1  
  12  Mo.  $_______  $_______

(End of schedule)

(d) Contracting officers shall not modify the resulting contract to include any alternative bid item that was not made part of the contract at the time of award.

Subpart M814.3—Submission of Bids

M814.301-70 Determination—responsiveness of bids.

Where a contracting officer cannot determine the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer shall submit the matter to the HCA for a decision.

M814.303 Modification or withdrawal of bids.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person should read substantially the same as follows:

“I am a bona fide agent for or representative of (Bidder’s name and address). I am authorized to withdraw the bid on IFB No. scheduled for opening on (insert date), and acknowledge receipt of the unopened bid.

Print Name  Telephone No  Date

Signature”

M814.304 Submission, modification and withdrawal of bids.

(a) All bids received by mail or delivered in person by the bidder (or by other means authorized by the IFB) shall be time and date stamped immediately upon receipt in the office of the addressee designated in the IFB.
M814.402 Opening of bids.

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

(b) If a bid bond is required, the bid opening officer shall read aloud the bid bond form, the amount of bid security, and the name of the surety. The recorder shall record this information on the Abstract of Offers, SF1409 or OF1419 or supplemental sheet. The bid opening officer and bid recorder shall sign and date the Abstract of Offers and supplemental sheets.

(c) Preferred practices for conducting bid openings.

(1) To ensure that bid opening occurs at the exact time specified, the bid opening officer should verify and announce the time before opening the bids.

(2) For the information of bidders present, the bid opening officer should provide an audible announcement approximately one minute prior to bid opening.

(3) The bid opening officer should announce audibly the commencement of bid opening. In the announcement, the bid opening officer should identify the invitation(s) for bids scheduled for opening.

(4) For construction contracts that provide for alternative bids or additive and deductive items, the bid opening officer should announce the amount of funds available for the award before the opening of bids.

(5) The bid opening officer should open the bids in full view of the parties present.

(6) When practicable, the bid opening officer should announce the following information for each bid: the bidder’s name, item and unit price bid, and any other pertinent information, such as delivery and discount terms.

(7) For bids submitted in multiple copies, one copy should remain in the bid opening room for public examination until the bid abstract is substituted. The contracting officer should use the original. For bids submitted in original only, see FAR 14.402-1(c). The contracting officer should retain all supplemental financial forms or other information submitted with each bid. The contracting officer shall not provide supplemental information for public examination.
(8) The bid opening official shall forward any negotiable instrument submitted as a bid guarantee to the contracting officer for handling in accordance with part M828.101-70, Safekeeping and return of bid guarantee.

(9) The contracting officer shall:

   (i) Prepare a record of the opening for the contract file including the names of persons attending the bid opening and the firms or organizations they represent;

   (ii) Verify the entries on all copies of a bid resolving any suspected mistake(s) following the procedures in FAR 14.407.

   (iii) Retain the envelopes in which bids and bid modifications are received until all awards are made. After award, the contracting officer should retain those with notations concerning abnormal receipt or opening for identification in the IFB file. The contracting officer may destroy the remainder.

M814.403 Recording of bids.

   (a) The bid opening official shall prepare and sign a statement that any erasures, strikeovers, or changes in price were noted at the time of bid opening. The statement shall be included on, or attached to, the abstract or record of bids.

   (b) In accordance with local procedures, the contracting officer shall make the abstract available for public inspection for at least 30 calendar days. The contracting officer should include late bids determined eligible for consideration on the bid abstract or, if necessary, in an amendment.

M814.404 Rejection of bids.

M814.404-1 Cancellation of invitations after opening.

   (c) The authority to make the determinations in FAR 14.404-1(c), (e) and (f) is delegated to the HCA. For each IFB that the contracting officer cancels or for which he/she receives no bids, the contracting officer shall include in the file in eCMS:

   (1) A copy of the IFB, pursuant to FAR 14.404-1, together with a list showing to whom the invitation was sent, identified by the IFB number; and

   (2) A statement to explain why no award was made.
M814.404-2 Rejection of individual bids.

(a)(1) When the contracting officer finds that a bid being considered for an award is incomplete, e.g., all pages of the IFB have not been returned by the bidder, the contracting officer shall obtain the advice of legal counsel. The contracting officer shall determine whether or not the bid as submitted is in such a form that acceptance would create a valid and binding contract. The resultant contract must require the contractor to perform in accordance with all of the terms and conditions of the invitation.

(2) When VA receives a single bid in response to an IFB with a bidding time of 30 or more calendar days, the contracting officer should not reject the bid simply because it specifies a bid acceptance time that is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate a bid is a compelling reason for rejection; however, the contracting officer shall first request that the bidder extend the acceptance date of the bid to allow for proper evaluation.

(3) In cases where VA receives more than one bid, the contracting officer shall reject as nonresponsive an individual bid that is not in compliance with the Government's bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.

M814.407 Mistakes in bids.

M814.407-3 Other mistakes disclosed before award.

(e) The authority to make the determinations required by FAR 14.407-3 under paragraphs (a), (b), (c) and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the HCA.

(g)(3) When the bidder furnishes evidence supporting an alleged mistake, the contracting officer shall refer the case to the Office of Acquisition and Logistics, Risk Management and Compliance Service.

M814.407-4 Mistakes after award.

(b) The approval authority to act on FAR 14.407 -4(b) is delegated to the HCA or designee. The designee shall be no lower than the Chief/Director of the contracting office.

(d) Each proposed determination shall be coordinated with legal counsel, through the Office of Acquisition and Logistics, Risk Management and Compliance Service.
(f) RMCS shall maintain the administrative determination signed by SPE/DSPE for the agency, in support of FAR 14.407-3(h) and 14.407-4(f).
SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M815—CONTRACTING BY NEGOTIATION

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M815.001 Definitions.

Subpart M815.1—Source Selection Processes and Techniques
M815.101 Best value continuum.
M815.101-1 Tradeoff process.

Subpart M815.2—Solicitation and Receipt of Proposals and Information
M815.203 Requests for proposals.
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M815.204 Contract format.

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M815.303-70 Source selection roles and responsibilities.
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M815.304 Evaluation factors and significant subfactors.
M815.304-70 Evaluation factor commitments.
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M815.306 Exchanges with offeror after receipt of proposals.

Subpart M815.4—Contract Pricing
M815.404 Proposal analysis.
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Subpart M815.6—Unsolicited Proposals
M815.604 Agency points of contact.
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Appendix and Attachment
Appendix M815-A - Department of Veterans Affairs Source Selection Guide
Attachment M815-A - Sample Price Negotiation Memorandum (PNM) Checklist
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M815.000 Scope of part.

This part prescribes VA’s policies and procedures regarding competitive and noncompetitive negotiated acquisitions.

M815.001 Definitions.

The following terms are associated with, and often used in the course of conducting negotiated acquisitions:

*Best value* means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

*Clarifications* means the limited exchanges between the Government and offerors that may occur when award without discussions is contemplated.

*Communications* means the exchanges, between the Government and offerors, after receipt of proposals.

*Competitive range* means and consists of the offers rated most highly after proposal evaluations. Discussions will be held only with offerors in the competitive range. (See FAR 15.306(c)).

*Discussions* means the negotiations conducted in a competitive acquisition. Discussions take place after establishment of the competitive range.

*Industry Day* means an event held by the Government to present requirements to industry representatives (e.g., pre-solicitation conference, pre-proposal conference, etc.).

*Lowest Price Technically Acceptable* means a process used in competitive negotiated contracting where the best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

*Minor or clerical error* means a minor informality or irregularity that is merely a matter of form and not of substance or a clerical error apparent on its face in the proposal.

*Peer review* means the review of processes and strategies by other experts in a particular field.
Proposal modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations. (See FAR 15.001.)

Requirements documents means all aspects of the Request for Proposal (RFP) that convey the needs of the Government to offerors, including the Statement of Objectives (SOO), Statement of Work (SOW), Performance Work Statement (PWS), technical requirement documents, and system requirement documents.

Requiring office means the entity (for example, a program management office or other organizational entity) responsible for translating user requirements into the requirements documents within the RFP that communicate those requirements to offerors.

Risk, as it pertains to source selection, is the potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror’s proposed approach to achieving the contract objectives may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

Source selection means the process used in competitive, negotiated contracting to select the proposal that offers the best value to the Government.

Source Selection Authority (SSA) means the Government official responsible for selecting the source(s) in a negotiated acquisition.

Source Selection Advisory Council (SSAC) means a group of senior Government personnel who provide counsel during the source selection process and must prepare the comparative analysis of the SSEB’s evaluation results, when directed by the SSA. Organizations should establish an SSAC for acquisitions with a total estimated value of $100M or more. An SSAC is optional for acquisitions with a total estimated value of less than $100M.

Source Selection Evaluation Board (SSEB) means a group of Government and, if needed, approved non-Government personnel, representing the various functional disciplines relevant to the acquisition. The SSEB is comprised of a Chairperson and Evaluators (also known as SSEB Members). Use of non-Government personnel as voting members of the SSEB is strictly prohibited (see FAR 7.503(c)(12)(ii), FAR 37.203 and FAR 37.204).
Source Selection Plan (SSP) means a plan that describes how the source selection will be organized, how proposals will be evaluated and analyzed, and how source(s) will be selected.

Source Selection Team (SST) means a team that is tailored to the unique acquisition, tasked with carrying out a source selection. Composition of the team generally consists of the SSA, contracting officer (if different from the SSA), SSAC, SSEB, Advisors, Cost or Price Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.

Source Selection Decision Document (SSDD) refers to the document that reflects the SSA's independent, integrated and comparative assessment and decision.

Strength means an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

Uncertainty means any aspect of a non-cost/price factor proposal for which the intent of the offer is unclear (e.g. more than one way to interpret the offer or inconsistencies in the proposal indicating that there may have been an error, omission, or mistake).

Subpart M815.1—Source Selection Processes and Techniques

M815.101 Best value continuum.

M815.101-1 Tradeoff process.

(a) This process allows for a tradeoff between non-cost factors and cost/price and allows the Government to accept other than the lowest priced proposal or other than the highest technically rated proposal to achieve a best-value contract award. Further, it describes various rating approaches to evaluating proposals when using a tradeoff process.

(b) Tradeoff process is appropriate when—

(1) The requirement is complex;

(2) The Government anticipates substantive differences in the proposed solutions; or

(3) The Government is willing to pay for added benefits of a higher priced solution.
Subpart M815.2—Solicitation and Receipt of Proposals and Information

M815.203 Requests for Proposals.

M815.203-70 Developing the request for proposals.

A well-written RFP is critical to the success of the source selection. There should be consistency between the requirements documents, SSP (if utilized), and the RFP. Therefore, the acquisition team must ensure a clear linkage between the requirements and evaluation factors to maximize the accuracy and clarity of the RFP.

M815.204 Contract format.

(e) The cognizant head of the contracting activity (HCA) may exempt individual contracts or classes of contracts that are not identified in FAR 15.204(a) through (d) from the use of a uniform contract format. Written justification for the exempted use shall be prepared by the contracting officer (CO), with the coordination/review of the affected contract administration and payment offices. The justification shall be forwarded to the HCA for review/approval/disapproval.

Subpart M815.3—Source Selection

M815.303-70 Source Selection roles and responsibilities.

The extent to which one will use the positions and procedures outlined below will depend upon the complexity and dollar value of each acquisition and the available resources. COs should apply prudent business sense to tailor the processes to fit the circumstances. (See Appendix M815-A, Department of Veterans Affairs Source Selection Guide)

(a) A typical source selection organization consists of—

(1) SSA;
(2) CO;
(3) SSEB;
(4) Source Selection Evaluation Board Chairperson;
(5) SSAC; and
(6) Advisors, Cost or Pricing Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.

(b) The SSA shall—
(1) Be responsible for the proper and efficient conduct of the source selection process in accordance with this procedure and all applicable laws and regulations;

(2) Appoint the chairpersons for the SSEB and, when used, the SSAC;

(3) Ensure that personnel appointed to the SST are knowledgeable of policies and procedures for properly and efficiently conducting the source selection. Ensure the SST members have the requisite acquisition experience, skills, and training necessary to execute the source selection, and ensure the highest level of team membership consistency for the duration of the selection process;

(4) Ensure that realistic source selection schedules are established and source selection events are conducted efficiently and effectively in meeting overall program schedules. The schedules should support proper and full compliance with source selection procedures outlined in this document and the established Source Selection Plan (SSP) for the acquisition;

(5) Ensure all involved in the source selection are briefed and knowledgeable of Subsection 27(a) of the Office of Federal Procurement Policy Act, 41 U.S.C., Section 423, and FAR 3.104 regarding unauthorized disclosure of contractor bid and proposal information, as well as source selection information;

(6) Ensure that all persons receiving source selection information are instructed to comply with applicable standards of conduct (including procedures to prevent the improper disclosure of information) and sign a Non-Disclosure Agreement and a conflict of interest statement;

(7) Ensure Conflict of Interest Statements (from both Government members/advisors and non-Government team advisors) are appropriately reviewed and actual or potential conflict of interest issues are resolved prior to granting access to any source selection information (see CFR 2635);

(8) Make a determination to award without discussions or enter into discussions;

(9) Select the source whose proposal offers the best value to the Government in accordance with the established evaluation criterion in the appropriate section of a non-Uniform Contract Format (UCF) solicitation or in accordance with the established evaluation criterion in Section M of the solicitation; and

(10) Document the rationale in the SSDD.

(c) The CO shall—

(1) Manage all business aspects of the acquisition and advice and assist the SSA in the execution of the responsibilities as outlined above and work with the SSEB
Chair to ensure the evaluation is conducted in accordance with the evaluation criteria specified in the solicitation;

(2) Ensure that required approvals are obtained before non-Government personnel are allowed to provide source selection support (See FAR 37.203);

(3) Ensure that procedures exist to safeguard source selection information and contractor bid or proposal information;

(4) Ensure that all non-Government advisors who are to assist in the source selection process do not have access to proprietary information until the CO receives the consent of the submitting contractor(s) to provide access thereto;

(5) Maintain the documents and source selection evaluation records;

(6) Release the final solicitation only after obtaining all required approvals;

(7) Serve as the single point of contact for all solicitation-related inquiries from actual or prospective offerors;

(8) Control exchanges with offerors after receipt of proposals (see FAR 15.306); and

(9) Enter discussions, with the approval of the SSA, to establish the competitive range. Note that only the CO may conduct discussions with the offeror(s).

(d) The SSEB (members) shall—

(1) Conduct a comprehensive review and evaluation of proposals against the solicitation requirements and the approved evaluation criteria;

(2) Ensure the evaluation is based solely on the evaluation criteria outlined in the RFP;

(3) Not perform comparative analysis of proposals;

(4) Assist the SSEB Chairperson in documenting the SSEB evaluation results;

(5) Support any post-source-selection activities, such as debriefings and post-award reviews/meetings, as required; and

(6) Not make source selection recommendations unless requested by the SSA.

(e) The SSEB Chairperson shall—

(1) Be responsible for the overall management of the SSEB and act as the SSEB’s interface to the SSA and the SSAC (if used);
(2) Establish evaluation teams, as appropriate, to support an effective source selection evaluation. Appoint members to the evaluation teams, subject to approval of the SSA;

(3) Ensure the skills of the personnel, the available resources, and times assigned are commensurate with the complexity of the acquisition;

(4) Ensure members of the SSEB are trained and knowledgeable on how an evaluation is conducted prior to reviewing any proposals;

(5) Ensure the evaluation process follows the evaluation criteria and ratings are being consistently applied;

(6) Provide consolidated evaluation results to the SSA or the SSAC if the SSAC is designated as the interface between the SSEB and SSA; and

(7) Support all post source selection activities such as debriefings and post-award reviews/meetings, as required.

(f) SSAC Members shall—

(1) Review the evaluation results of the SSEB to ensure the evaluation process follows the evaluation criteria and the ratings are appropriately and consistently applied; and

(2) Consolidate the advice and recommendations from the SSAC into a written analysis and recommendation for use by the SSA in making the best-value decision. Ensure that minority opinions within the SSAC are documented and included within the analysis.

(g) The SSAC Chairperson shall appoint SSAC members, subject to SSA approval.

(h) Government Advisors: When an SSAC is not used, consideration should be given to the use of Government advisors to assist the SSA. These advisors can provide expertise within specific functional areas, similar to the involvement of the SSAC, but need not provide the formal written comparative analysis required of an SSAC. Government advisors may also be used to provide assistance to the SSEB as subject-matter experts.

(i) Non-Government Advisors: Use of non-Government personnel as advisors may be authorized, but should be minimized as much as possible. Non-Government advisors shall be supported by a written determination (see FAR 37.203, Policy, and 37.204, Guidelines for determining availability of personnel). The CO must ensure that the non-Government advisor who will assist in the source selection process does not have access to proprietary information until the CO receives the consent of the submitting
contractor(s) to provide access to the non-Government advisor to execute this requirement; the following is suggested solicitation language:

(1) Offerors are advised that employees of the firms identified below may serve as nongovernment advisors in the source selection process. These individuals will be authorized access only to those portions of the proposal data and discussions that are necessary to enable them to perform their respective duties. Such firms are expressly prohibited from competing on the subject acquisition.

INSERT NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF FIRMS

(2) In accomplishing their duties related to the source selection process, the aforementioned firms may require access to proprietary information contained in the offerors’ proposals. Therefore, pursuant to FAR 9.505, these firms must execute an agreement with each offeror that states that they will (1) protect the offerors’ information from unauthorized use or disclosure for as long as it remains proprietary and (2) refrain from using the information for any purpose other than that for which it was furnished. To expedite the evaluation process, each offeror must contact the above companies to effect execution of such an agreement prior to the submission of proposals. Each offeror shall submit copies of the agreement with their proposal.

(j) Program Management/Requirements Office: The requirements development process is vital to the success of the negotiated acquisition. The leadership of the Program Management/Requirements Office shall:

(1) Ensure the technical requirements—consistent with the cognizant requirements document—are approved and stable, establish technical specifications, and develop a SOW, SOO, or PWS.

(2) Allocate the necessary resources including personnel, funding and facilities to support the source selection process.

(3) Assist in the establishment of the SST to include serving as an advisor or member to the SSAC and/or the SSEB as needed.

(4) Assist in the development of the evaluation criteria consistent with the technical requirements/risk.

M815.303-71 Source Selection Authority.

The authority of the Secretary to appoint an individual other than the CO to serve as the source selection authority for a particular acquisition or a group of acquisitions is delegated to the HCA. If an HCA needs to designate an individual other than the CO as the source selection authority for a particular acquisition or a group of acquisitions, the HCA shall prepare a written request/justification and shall submit the request/justification to the Senior Procurement Executive for approval/disapproval.
M815.303-72 Developing the Source Selection Plan.

(a) An SSP is recommended for all best-value, negotiated, competitive acquisitions under FAR 15. The SSP documents the source selection organization that is established. Likewise, a typical source selection plan sets out evaluation factors, evaluation standards, and evaluation procedures. All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (see FAR 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described (see FAR 15.304(d)).

(b) The SSA shall approve the SSP before the final solicitation is issued. At a minimum, the SSP (if utilized), shall—

1. Include a brief description of the requirement, a summary of the objectives, and any reference to applicable guidance;

2. Provide a summary of the planned acquisition approach to include a description of how the specific acquisition being competed fits into the entire program;

3. Describe the organizational structure and identify the various roles and responsibilities of each of the source selection teams, such as the SSET, the SSAC, the CO, and the SSA, during the phases of the source selection. List members and advisors by name, position title, company affiliation, if applicable, or by functional area;

4. Describe the process and controls for communication with industry as well as internal Government team communication, to include the use of email, during the source selection, and outline the security measures that will be utilized to ensure the information is protected as source selection information. (See FAR 2.101 and FAR 3.104);

5. Identify the evaluation factors, subfactors, their relative order of importance; the importance of all non-cost or price factors to the cost or price factor; and the evaluation process, including specific procedures and techniques to be used in evaluating proposals. Include within the SSP document or attach the relevant and most current portions of Sections L and M in the RFP (or a non-UCF solicitation) to preclude inconsistencies between the SSP and RFP;

6. Identify the types of documents that will be prepared during the course of the source selection, to include at a minimum an SSEB Report covering the initial evaluation, updated as necessary following responses to discussion questions, and a final SSEB Report after receipt of Final Proposal Revisions, an SSAC Report, if there is an SSAC, which reflects the SSAC’s consideration of the final SSET Report and makes the SSAC’s recommendation to the Source Selection Authority, and in accordance with FAR 15.308, the Source Selection Decision Document (SSDD), which reflects the
SSA’s independent determination. A power point presentation is acceptable to brief the SSA and the SSAC on the status of the procurement, but should not, as a general rule, constitute the official Reports required for the source selection;

(7) Identify the major acquisition activities and projected completion dates. Reference the information on the use of independent management reviews, Industry Days, and draft RFPs as significant source selection activities;

(8) Address the use of non-Government personnel and compliance with requirements; and

(9) Detail the plan for securing all source selection materials throughout the evaluation process.

M815.304 Evaluation factors and significant subfactors.

M815.304-70 Evaluation factor commitments.

If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with VAAR 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the CO shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value. The CO should monitor this contract as delineated in FAR 19.704(a)(10)(ii), which requires the offer to submit periodic reports so that the Government can determine the extent of compliance by the offer through the subcontracting plan.

M815.305 Proposal evaluation.

(a)(2)(i) Past performance evaluation. When a past performance evaluation is required by FAR 15.304, and the solicitation includes either the clause at FAR 52.219-8, Utilization of Small Business Concerns, or the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of these clauses. Contractors may not be given “downgraded” past performance evaluations for availing themselves of their rights by filing protests and claims or for deciding not to use Alternate Dispute Resolution (ADR) and contractors may not be given more “positive” past performance evaluations for refraining from filing protest and claims or for agreeing to use ADR.

M815.306 Exchanges with offerors after receipt of proposals.

(d) For acquisitions with an estimated value of $25 million or more, COs should conduct discussions and follow the procedures at FAR 15.306.
Subpart M815.4—Contract Pricing

M815.404 Proposal analysis

M815.404-1 Proposal analysis techniques.

(d) Cost realism analysis. (1) A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror’s cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed. The results of the analysis should be able to answer the following key questions:

(i) Is the offer based on realistic assumptions?

(ii) Does it show sufficient understanding of the requirements?

(iii) Are its various parts consistent with one another?

(iv) Is the cost/price data current, reasonably accurate, and verifiable? and

(v) Does the whole thing make sense in view of the experience?

(2) A cost realism analysis shall be performed when a cost-type contract is anticipated. In accordance with FAR 15.404-1(d)(3), cost realism on fixed price incentive contracts may be performed or in exceptional cases, on other competitive fixed price contracts. Adjustments for the most probable cost estimate should not be based solely on differences from the Independent Government Cost Estimate (IGCE). Where performance specifications are used, the IGCE is based on the Government’s implicit approach to the work, which may differ from the offerors approach. Also, the IGCE rates may not be comparable. The technical evaluation should reveal areas where each offeror’s approach is inadequate or its resourcing unrealistic, given the proposed approach. The technical evaluators and the cost evaluators should crosswalk technical deficiencies and weaknesses and their impact on cost to assure proper adjustments can be made to the proposed costs. However, this crosswalk should not be performed until after each group has completed their initial evaluation to avoid intentional or unintentional bias.

(i) The probable cost may differ from proposed cost and should reflect the Government’s best estimate of the cost of any contract that is most likely to result from the offeror’s proposal. The probable cost shall be used for purposes of evaluation to determine the “best value.” Therefore, when developing a most probable cost estimate, consider the following:

(A) As the required information is collected to evaluate the realism of the offeror’s cost (or price) estimate, the Government is also collecting the information required to develop its own estimate of the most probable contract cost.
(B) In developing the estimate, adopt the portion of the offeror’s estimate that appears realistic and modify the portion of the estimate that is believed to be unrealistic. For example, the Government may accept proposed labor hours and adjust the labor rate based on an audit recommendation. Adjustments may increase or decrease cost estimates.

(C) Use relevant estimating tools and techniques.

(D) Conduct meaningful discussions with offerors in the event there are any meaningful adjustments to the offeror’s estimated cost.

(E) As the Government completes the estimate, clearly document the rationale for any adjustment.

M815.404-4 Profit.

(b) Policy.

(1)(i) The CO shall use a structured approach for developing a prenegotiation profit or fee objective for those acquisitions that require cost analysis.

(2) FAR 15.404-4(b)(2) permits agencies to use another agency’s structured approach. Therefore, COs are encouraged to use the Department of Defense Weighted Guidelines method as delineated in the Department of Defense Federal Acquisition Regulation Supplement.

M815.405 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the CO and the offeror an opportunity to reach agreement on a fair and reasonable price. The CO is responsible for exercising the requisite judgment needed to reach a negotiated agreement with the offeror and is solely responsible for the final price agreement. However, when significant auditor recommendations are not adopted, the CO must provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The CO’s objective is to select an appropriate contract type and negotiate a price that provides the contractor the greatest incentive for efficient and economical performance. The CO must balance the contract type, cost, and profit or fee negotiated to achieve a total result -- a price that is fair and reasonable to both the Government and the contractor. (See Attachment M815-A, Sample Price Negotiation Memorandum (PNM) Checklist)
M815.406-3 Documenting the negotiation.

(a) The CO shall document in the form of a price negotiation memorandum (PNM) the principal elements of the negotiated agreement in accordance with FAR 15.406-3. (See the attached Attachment M815-A, Sample PNM Checklist).

(c) The PNM serves as a detailed summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, the negotiated position, and the methodology and rationale used in arriving at the final negotiated agreement.

(d) The CO shall document in the Electronic Contract Management System the principal elements of the negotiated agreement in accordance with FAR 15.406-3.

Subpart M815.6—Unsolicited Proposals

M815.604 Agency points of contact.

(c) When a VA employee receives an unsolicited proposal from a potential offeror of an unsolicited proposal, they must refer the proposal to the following:

(1) Facility level unsolicited proposals must be referred to the HCA for the field facility.

(2) Proposals to the VA National Acquisition Center must be referred to the Executive Director, VA National Acquisition Center.

(3) Proposals to VA Central Office must be referred to the Executive Director, Office of Procurement, Acquisition, and Logistics.

M815.606 Agency procedures.

HCAs shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of FAR 15.606(a). The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.
## SAMPLE
### PRICE NEGOTIATION MEMORANDUM (PNM) CHECKLIST

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<td>c. Item or service acquired</td>
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<td>d. Case number</td>
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<td><strong>2. INTRODUCTORY SUMMARY</strong></td>
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<td>b. Type of contractual action</td>
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<td>c. Tabular summary of cost, FCOM, profit/fee and price:</td>
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<td>(1) Proposed and objective</td>
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<td>(2) Negotiated</td>
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<td>(3) Separate summaries for options, etc.</td>
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<td>(4) Fee or profit rate for each position</td>
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<td>(5) Award fee pool for each position</td>
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<td>(6) Share ratios for each position</td>
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<td>(7) Min/Max fee for each position</td>
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<td>(8) Ceiling price and percentage for each position</td>
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<td>(9) Type of contract for each position</td>
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<td><strong>3. PARTICULARS</strong></td>
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<td>a. Item or service identification:</td>
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<td>(1) Types and quantities</td>
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<td>(2) Previous buys of the same or similar items</td>
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<td>(a) When they were bought</td>
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<td>(c) Contract type</td>
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</table>
(d) Prior unit or total prices (target/ finals if applicable and available: document separately recurring and non-recurring costs)

(e) Current unit or CLIN prices (may be attached) with name of item, part number, quantities, etc., as applicable (document separately recurring/ non-recurring costs)

(f) Summary explanation of significant differences between the instant buy and most recent historical price(s)

PNM CONTENTS CHECKLIST (Continued)

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b. Explain method used to establish line item or unit prices

c. Clearance authority

(1) Approval authority

(2) Approval date

(3) Limitations specified by the approving authority

(4) Sessions, dates, and participants

d. Fact-finding/negotiation dates, places, names, titles, and office symbols for the government and the Contractor

e. Principal government/Contractor negotiator identities

4. ACQUISITION SITUATION

a. Acquisition background (contract type, IPT pricing, etc.)

b. Period of performance and/or delivery schedule (address resolution of differences between required, proposed and negotiated)

c. Outside influences/unusual time constraints

d. Government furnished facilities, equipment or base support unique to this acquisition

e. Unique features such as should cost, design-to-cost, life cycle cost, special payment procedures, and special provisions (clauses: savings, EPA, performance based payments, etc.)

5. NEGOTIATION SUMMARY

a. Discussion/explanation of price analysis performed by the contractor and/or the government's price analysis in the following areas or a statement why it was not performed

(1) Price element summary for proposed, objective, and considered negotiated amount

(2) Basis or estimating technique used to determine price reasonableness (attach exemption/waiver if in lieu of cost and pricing data)

(3) Identify submission of other than cost or pricing data necessary to determine a reasonable price. Include discussion on rationale and required updates (attach sales data, catalogues, competitive price list, independent market prices, other data, etc.)

(4) Identify subcontractors required to provide cost and pricing data where the prime's requirement has been waived

(5) Requirement changes and how the price analysis and objective were adjusted

(6) Significant differences between the objective and negotiated amounts

(7) Use of advisory information/report to establish the objective, including significant differences between them, the objective, and the final negotiated agreement

b. Identify proposal of record used to establish objective
c. When cost and pricing data is obtained, a statement that full reliance was placed on contractor provided data except where specifically identified (including agreed to cut-off dates)
d. Major cost element summary with sub-paragraph index for proposed, objective and considered negotiated amounts (including direct and indirect costs for labor, materials, etc.)
ce. Discussions/explanations of cost analysis performed for each major cost element for contractor proposed, government objective and negotiated positions in the following areas
   (1) Summary breakout of the components which make up the major cost element amount
      (a) Labor hours by rate category
      (b) Identify and discuss indirect rate
      (c) Materials and other costs by category
      (d) Subcontractor cost or pricing data

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<td>2. Sole source or competitive</td>
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<td>3. Extent and adequacy of the prime's review</td>
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<td>4. Why certified cost or pricing data not obtained when required (attach waiver/exemption)</td>
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<td>5. Why certified cost or pricing data obtained when not required</td>
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<td>(e) Basis or estimating method used</td>
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<td>(f) Explanation of contractor data not relied upon and reason for using other than contractor's data, identity data used to develop the government's position (see 5.c)</td>
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<td>(g) Rationale, sources, and currency of the data used to establish the objective (include modification change determined to be non-commercial where originally commercial)</td>
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<td>(h) Requirement changes and how costs were adjusted</td>
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<td>(i) Significant differences between the objective and negotiated amounts</td>
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<td>(j) Use of advisory reports/IPT pricing in establishing the objective, including significant differences between them, the objective, and the final negotiated agreement</td>
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<td>(k) Actual costs to date, % of completion, trends and, if significant, the contractor's estimate to complete</td>
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<td>(2) With incentive arrangements, describe how the share ratio(s) and ceiling price(s) were established</td>
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<td>(3) When establishing a final price of an incentive contract</td>
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<td>(a) Compare contractor stated costs incurred and acceptable actuals reflected in the objective and explain differences. Show the calculations of the incentive arrangement to adjust the final profit/fee and compare to ceiling price</td>
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<td>(b) Identify significant differences between objective and negotiated position</td>
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<td>(c) Identify supplemental agreements that adjusted targets and state respective amounts</td>
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<td>(d) Identify any firm fixed price and cost reimbursement amounts not subject to the incentive settlement, but which were in the total settlement amount</td>
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<td>(4) Profit. Explain how the objective was developed</td>
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(a) If Weighted Guidelines was used, state assigned weights and provide rationale when weights are below or above normal. *(DD 1547 Attached to the PNM)*

(b) If Weighted Guidelines was not used, explain why not and how profit objective was developed

### 6. MISCELLANEOUS

a. List government advisory reports *audit, pricing, technical, should cost, etc.*

   (1) Explain use of informal field assistance in lieu of formal report(s)

   (2) Explain basis for any field reports required but not obtained

b. Provide status and explanation/disposition of the deficiencies on the following contractor systems that impact the instant negotiations

   (1) Accounting system *include adequacy of disclosure statement and compliance with cost accounting standards*

   (2) Purchasing system if applicable

   (3) Compensation system

   (4) Estimating system

   (5) Any other systems, as appropriate

### PNM CONTENTS CHECKLIST * (Continued) *

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c. List/identify contractor provided cost/price data. Identify certificate of current cost/pricing data, if provided

d. Summarize why the negotiated price is fair and reasonable

   (1) Address the 25% limitation on price increases

e. Include signatures of the Contracting Officer and the author of the PNM

### 7. ATTACHMENTS

a. DD 1547 - Weighted Guidelines *unsigned without a report number for preliminary PNM*

b. DD 1861 - Facilities Capital Cost of Money (FCCM) *(for the objective only)*

c. Cost/profit charts *(if incentive type contract)*

d. Other attachments identified in the PNM
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VAAM Appendix M815-A

DEPARTMENT OF VETERANS AFFAIRS
SOURCE SELECTION GUIDE

May 2019
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Chapter 1

Introduction

1.1 **Preamble:** The extent to which one will use the processes and techniques described in this guide will depend upon the complexity and dollar value of each acquisition and the available resources. Source selection officials should apply prudent business sense to tailor the processes to fit the circumstances.

1.2 **Purpose:** This document provides the Veterans Affairs' (VA) recommended procedures for conducting competitively negotiated source selections and outlines a common set of principles and procedures for conducting such acquisitions. The goal of these procedures is to ensure the source selection process delivers quality products and services in a timely fashion to meet VA’s mission.

1.3 **Procurement Integrity:** All personnel involved in the source selection process are responsible for maintaining the integrity of the procurement. Therefore, source selection personnel are subject to the requirements of the Procurement Integrity Act (see 41 U.S.C. chapter 23, Restrictions on Obtaining and Disclosing Certain Information), which impose stringent requirements related to safeguarding source selection information, contractor bid or proposal information and other integrity issues. Violation of these requirements could result in civil and/or criminal penalties. Consequently, it is critical that everyone becomes familiar with the prohibitions and certification requirements of the Act and related statutes and regulations. All questions and/or issues regarding procurement integrity policies and regulations shall be directed to the legal counsel assigned to the source selection.
Chapter 2

Pre-Solicitation Activities

2.1 Market Research: The first pre-solicitation activity is to conduct market research which is essential to identifying capabilities within the market to satisfy VA’s needs and is the key to determine whether a commercial item or small business can meet the Government’s needs. Market research may significantly influence the statement of work and is central to designing an acquisition strategy and identifying evaluation criteria. Thorough and complete market research is the foundation of an effective source selection process toward meeting the VA’s needs. Early industry outreach and/or involvement, an effective part of Market Research, is vital to the source selection process. Exchanging information on upcoming acquisitions improves understanding of Government requirements and Government understanding of industry capabilities.

Market research should use the expertise of all members of an acquisition team/IPT. Good market research requires the team/IPT to understand the technical alternatives that are available, the differences among terms and conditions, the practical aspects of standard commercial practices, and the value each alternative offers the Government. Specific roles are shown below:

Program Offices:

- Define technical requirements.

- Conducts initial market research to develop requirements and uses VA’s Vendor Information Pages (VIP) database to identify verified and capable SDVOSBs and VOSBs at https://www.vip.vetbiz.gov/.

- Helps conduct research to provide information to the Contracting Officer concerning whether two or more verified SDVOSBs or VOSBs are available (VA “Rule of Two” 38 U.S.C. 8127(d) requirements).

- Use the System for Award Management (SAM) at https://www.sam.gov/portal/SAM/#1 which is a searchable database that is most widely used and proficient in identifying small business vendors.

- Seek advice from the Contracting Officer and Small Business Specialist as appropriate, to ensure that potential sources of information are explored to the fullest extent practicable, including existing contract vehicles, small businesses, and new entrants to Federal contracting.

- Engage with industry (small business conferences, outreach events, meet with small business vendors, attend professional/trade associations/conferences).
• Evaluate expected level of competition; assess the need for introducing new entrants to the market and recommend to the Contracting Officer way to effectively do this.

• Determine if commercial items or non-developmental items are available that meet the Government’s requirement.

• Serve as the primary point of contact in meetings with potential vendors to ascertain additional market research information.

• Ensure that all vendors contacted understand that the reason they are being contacted is for market research purposes only and make no representations or other statements about future commitments or contracts.

• Request vendors to provide their standard public and commercially available literature and capability documents in response to market research inquiries.

• Write the Market Research Report.

• Program/Project Manager signs the Market Research Report.

• Supply information about needs to VA Forecast of Contracting Opportunities.

**Contracting Officer and Contract Specialist:**

• Assist the Program Office staff in documenting their requirements.

• Serve as part of the Program Office Acquisition Team in conducting market research.

• Ensure that the VA “Rule of Two” is fully implemented in accordance with 38 U.S.C. 8127(d) requirements.

**Office Small Disadvantaged Business Utilization (OSDBU):**

• Focus on the agency procurement forecast; ensure the Contracting Officer and the Contract Specialist understand what is in the agency’s procurement forecast.

• In accordance with OSDBU’s statutory mandate, make recommendations to the program manager, contract specialist, and contracting officer whether an action should be set-aside.

• Document the recommendation using VA Form 2268, Small Business Program and Contract Bundling Review.
• Ensure the VA “Rule of Two” is fully implemented in accordance with 38 U.S.C. 8127(d) requirements.

• Provide market research assistance through outreach events, VA Business Intelligence tool (VA BIT), etc.

**Small Business Liaisons Supporting VA field activities:**

• Participate in the acquisition planning processes to help Program Offices.

• Ensure that the VA “Rule of Two” is fully implemented in accordance with 38 U.S.C. 8127(d) requirements.

• Identify requirements for small businesses.

• Participate in the review of each proposed acquisition exceeding the simplified acquisition threshold for potential inclusion into the socioeconomic program.

• Assist in identifying alternative strategies that would reduce or minimize acquisition strategies involving substantial bundling.

• Coordinate the Procurement Forecast of expected contract opportunities (Advance Acquisition Plans).

**Contracting Officer:**

• Coordinate market research on specific acquisition package with program office;

• Ensure that the VA “Rule of Two” is fully implemented in accordance with 38 U.S.C. 8127(d) requirements by--

  o Reviewing the Vendor Information Pages (VIP) database at https://www.vip.vetbiz.gov;

  o Searching the VIP database by applicable North American Industry Classification System (NAICS) codes to determine if two or more verified service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) in the appropriate NAICS code, are listed as verified in the VIP database; and

  o Determining if identified SDVOSBs or VOSBs are capable of performing the work and likely to submit an offer/quote at a fair and reasonable price that offers best value to the Government.
• Set aside the requirement in the contracting order of priority in accordance with VAAR 819.70.

• Use pre-solicitation and sources sought notices as required and appropriate (RFIs, draft RFPs, pre-proposal conferences, and site visits).

• Approve the Market Research Report and ensure that appropriate market research documentation is included in the contract file.

• Prepare market research memo to document findings and include it with the VA Form 2268 submitted for review.

• Verify, through the System for Award Management (SAM) (see https://www.sam.gov/portal/SAM/#1) that an eligible firm meets the size standard applicable to the North American Industry Classification System (NAICS) used for the particular procurement.

• Determine if the product or service identified to satisfy the Government’s requirement meets the FAR definition of a Commercial Item.

• Manage information on a specific acquisition package to ensure compliance with procurement integrity requirements (see FAR 3.104).

• Serve as the Source Selection Authority (SSA) on all procurements unless another SSA is formally appointed in accordance with FAR 15.303.

• Ensure the contract file is sufficiently documented to support all business decisions.

**Office of General Counsel:**

• Advise the Contracting Officer and team as required.

• Include vendor communications in annual ethics training; ensure ethics training clearly explains what is permissible, not only what is prohibited.

**2.2 Acquisition Planning/Plans:** The results of market research shall be incorporated into the acquisition plan and planning. Acquisition planning is paramount for a successful source selection. It is the process by which the Government coordinates and integrates the efforts of all personnel responsible for an acquisition through a comprehensive plan. Its purpose is to satisfy VA’s needs in the most effective, economical and timely manner and should address how the Government will manage the acquisition through all phases of the acquisition life cycle. FAR Part 7 addresses policies related to acquisition planning and the development of written Acquisition Plans. Acquisition plans must incorporate the results of market research. Acquisition planning should start when VA identifies a need for supplies and/or services. This early teaming
effort will reduce false starts and resultant delays that frequently accompany the preparation of complex procurement requirements.

2.3 Requirements: The Source Selection Team (SST) is responsible for maintaining effective liaison with the requiring office to ensure requirements are effectively addressed within the requirements documents.

2.4 Risk Assessment: The requiring office—in conjunction with the acquisition team members, initial membership of the SST, and stakeholders—shall conduct the risk analysis in accordance with FAR 7.105 necessary to support the acquisition planning process. This assessment will be critical in developing evaluation factors.

2.5 Using Draft Request for Proposals (RFP): The draft RFP is an important tool to seek input from industry on the Government requirement and ensure greater understanding on both sides of the acquisition. Use of a draft RFP is highly recommended for all acquisitions. The specific content of the draft RFP will be determined by the Contracting Officer.

2.6 Evaluation Factors and Subfactors: represent those specific characteristics that are linked to significant RFP requirements and objectives having an impact on the source selection decision and are expected to be discriminators, or are required by statute/regulation. They are the uniform baseline against which each offeror’s proposal is evaluated allowing the Government to make a best-value determination. The evaluation of factors and subfactors—

1. May be quantitative, qualitative, or a combination of both;

2. Shall set forth their relative order of importance, and the importance of non-cost or price factors to cost or price factors in the solicitation in enough depth to communicate what will be evaluated;

3. Shall be the primary determinant of the detailed information requested in the solicitation’s instructions to offerors; and,

4. Subfactors shall not be evaluated separately if subfactors are used.

To reiterate, all source selections shall evaluate cost or price, and the quality of the product or services (see FAR 15.304 – Evaluation factors and significant subfactors). When a procurement requirement is not set aside for SDVOSBs/VOSBs in accordance with subpart 819.70, the contracting officer shall document the file in accordance with OSDBU guidance and include SDVOSB/VOSB evaluation preferences, as set forth in 815.304.

More evaluation factors are often a net negative. Use caution when subdividing factors into multiple levels of subfactors since they further diminish the importance of any one aspect of the factor and introduces unnecessary complexity into the source selection.
process. This can also lead to closely rated proposals with little discrimination among competitors and no distinction among criteria that drive performance and criteria that have no real impact.

2.7 Cost or Price: The Government shall evaluate the cost/price and the quality of the proposed product or service being acquired.

2.8 Quality of Product or Service: In accordance with FAR 15.304(c)(2), the quality of product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as—

1. Past performance;
2. Compliance with solicitation requirements;
3. Technical excellence;
4. Management capability; and
5. Personnel qualifications and prior experience.

The term “technical,” as used below and throughout the document, refers to non-cost factors other than past performance. More than one “technical” factor can be used and titled to match the specific evaluation criteria appropriate for the RFP. However, the ratings in Tables 1, 2, and 3 may be used for all quality of product or service factors other than past performance, regardless of the “technical” factor title.

2.9 Technical: The purpose of the technical factor(s) is to assess the ability, as reflected in its proposal, to satisfy the Government’s requirements. There are many aspects which may affect an offeror’s ability to meet the solicitation requirements. Examples include—

1. Technical approach;
2. Management approach;
3. Risk;
4. Personnel qualifications; and
5. Facilities.

The evaluation of risk is related to the technical assessment. Risk assesses the degree to which the offeror’s proposed technical approach for the requirements of the solicitation may cause disruption of schedule, increased costs, degradation of performance, the need for increased Government oversight, or the likelihood of unsuccessful contract performance. All evaluations that include a technical evaluation factor shall also consider risk. Risk can be evaluated in one of two ways:

1. As one aspect of the technical evaluation, inherent in the technical evaluation factor or subfactor ratings (reference 3.1.2.1) or
2. As a separate risk rating assigned at the technical factor or subfactor level (reference 3.1.2.2).
Finally, the technical factor may be divided into subfactors that represent the specific areas that are significant enough to be discriminators and to have an impact on the source selection decision. When subfactors are used, establish the minimum number necessary for the evaluation of proposals.

2.10 Relative Importance of Factors. The solicitation shall state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

1. Significantly more important than cost or price;

2. Approximately equal to cost or price; or

3. Significantly less important than cost or price (see FAR 15.101).

2.11 Request for Proposal (RFP): Use of a draft RFP is recommended. The specific content of the draft RFP will be determined by the Contracting Officer. Prior to release of the final RFP, a thorough, consolidated review by a multi-disciplined team is recommended.

2.12 Glossary of Source Selection Terms:

The following terms are associated with, and often used in the course of conducting negotiated acquisitions:

*Best Value* means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

*Clarifications* means the limited exchanges between the Government and offerors that may occur when award without discussions is contemplated.

*Communications* means the exchanges, between the Government and offerors, after receipt of proposals.

*Competitive Range* means and consists of the offers rated most highly after proposal evaluations. Discussions will be held only with offerors in the competitive range. (See FAR 15.306(c)).

*Discussions* refers to the negotiations conducted in a competitive acquisition with those offerors in the competitive range.

*Industry Day* means an event held by the Government to present requirements to industry representatives (e.g., pre-solicitation conference, pre-proposal conference, etc.).

*Lowest Price Technically Acceptable (LPTA)* means a process used in competitive negotiated contracting where the best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.
Peer Review means the review of processes and strategies by other experts in a particular field.

Proposal Modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal Revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations. (See FAR 15.001.)

Requirements Documents means all aspects of the RFP that convey the needs of the Government to offerors, including the Statement of Objectives (SOO), Statement of Work (SOW), Performance Work Statement (PWS), technical requirement documents, and system requirement documents.

Requiring Office means the entity (for example, a program management office or other organizational entity) responsible for translating user requirements into the requirements documents within the RFP that communicate those requirements to offerors.

Risk, as it pertains to source selection, is the potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror’s proposed approach to achieving the contract objectives may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

Source Selection means the process used in competitive, negotiated contracting to select the proposal that offers the best value to the Government.

Source Selection Authority (SSA) means the Government official responsible for selecting the source(s) in a negotiated acquisition.

Source Selection Advisory Council (SSAC) means a group of senior Government personnel who provide counsel during the source selection process and must prepare the comparative analysis of the SSEB’s evaluation results, when directed by the SSA. Organizations should establish an SSAC for acquisitions with a total estimated value of $100M or more. An SSAC is optional for acquisitions with a total estimated value of less than $100M.

Source Selection Evaluation Board (SSEB) means a group of Government and, if needed, approved non-Government personnel, representing the various functional disciplines relevant to the acquisition. The SSEB is comprised of a Chairperson and Evaluators (also known as SSEB Members). Use of non-Government personnel as voting members of the SSEB is strictly prohibited (see FAR 7.503(c)(12)(ii), FAR 37.203 and FAR 37.204).

Source Selection Plan (SSP) means a plan that describes how the source selection will be organized, how proposals will be evaluated and analyzed, and how source(s) will be selected.
Source Selection Team (SST) means a team that is tailored to the unique acquisition, tasked with carrying out a source selection. Composition of the team generally consists of the SSA, contracting officer (if different from the SSA), SSAC, SSEB, Advisors, Cost or Price Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.

Source Selection Decision Document (SSDD) refers to the document that reflects the SSA's independent, integrated and comparative assessment and decision.

Strength means an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

Uncertainty means any aspect of a non-cost/price factor proposal for which the intent of the offer is unclear (e.g. more than one way to interpret the offer or inconsistencies in the proposal indicating that there may have been an error, omission, or mistake).

2.13 Source Selection Team Roles and Responsibilities:

Source selection is accomplished by a team that is tailored to the specific acquisition. Teams for larger, more complex source selections generally consist of the SSA, Contracting Officer (CO), (if different from the SSA), Source Selection Advisory Council (SSAC), Source Selection Evaluation Board (SSEB), Advisors, Cost or Pricing Experts, Legal Counsel, Small Business Professionals/Specialists, and other subject-matter experts.

A key to selection of personnel is identification of the experience, education, and business and technical skills required of personnel at all levels of the SST. Define the required skills and experience with enough flexibility to allow substitution of training for experience. Source selection training methods include formal classes, on-the-job training, study of available source selection documents, and briefings by people with source selection experience.

Key members of the SST, such as the SSA, SSAC Chairperson, SSEB Chairperson, functional leads, and the CO, should have source selection experience in high dollar, complex acquisitions. All members of the team shall be designated early in the source selection process, and agencies shall provide the needed training to execute that specific source selection.

The SSA is the individual designated to make the best value decision. The appointment of the individual to serve as the SSA shall be commensurate with the complexity and dollar value of the acquisition. For acquisitions with a total estimated value of $50 million or more, the Agency head or designee shall appoint, in writing, an individual other than the PCO as the SSA. At a minimum, the SSA should meet the following criteria:

- One of the following certifications: Program Management - DAWIA Level III; FAC-P/PM Senior Level; or PMP.
• 10 years acquisition or program management experience.
• Previous Source Selection participation experience.
• Technical or business expertise with the commodity/service being procured.
• Knowledge of Source Selection procedures in FAR and VAAR.

For all other acquisitions, the CO may serve as the SSA in accordance with FAR 15.303(a) unless the Agency head or designee appoints another individual.

Chapter 3
Evaluation and Decision Process

3.1. Evaluation Activities: An in-depth review of each proposal against the factors and subfactors established in the solicitation and assign evaluation ratings shall be conducted.

Cost or Price Evaluation. Cost or price to the Government shall be evaluated in every source selection. However, no adjectival ratings shall be used for evaluating cost or price since cost or price is not rated. The level of detail of analysis required will vary among acquisitions depending on the complexity and circumstances of the acquisition, including the degree of competition, the phase of the program, the type of product/services to be acquired, and the contract type. To enable offerors to make informed decisions on how best to propose, every solicitation will provide an adequate description of the cost or price evaluation. In all source selections, the analysis must include a determination, by the Contracting Officer, of whether the proposed cost or price is fair and reasonable. In addition to determining reasonableness of the proposed cost or price, the Contracting Officer must also conduct a cost realism analysis if contracting on a cost reimbursement basis. Cost realism analysis may also be used on competitive, fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts. FAR Subpart 15.4 provides additional guidance on cost or price evaluation.

Price Analysis: In accordance with FAR 15.404-1(a)(2), price analysis shall be used when certified cost or pricing data are not required. Price analysis is the process of deciding if the asking price for a product or service is fair and reasonable, without examining the specific cost and profit calculations the offeror used in arriving at the price. It’s basically a process of comparing the price with known indicators of reasonableness. Examples of other forms of price analysis information include—

• analysis of previous prices paid;
• comparison of offeror’s price with the independent Government estimate (IGE);
• comparison of quotations or published price lists from multiple vendors; and
• comparison with GSA prices.

Cost Analysis: Is the element-by-element examination of the estimated or actual cost of contract performance to determine the probably cost to the offeror. The goal is to
form an opinion on whether the proposed costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are—

- Direct-Labor Dollars (labor hours and rates);
- Direct Material (material quantities and prices);
- Indirect Costs;
- Other Direct Cost (ODC);
- Facilities Capital Cost of Money (FCCM); and
- Profit or Fee.

**Technical Rating Evaluation Processes.** The technical rating reflects the degree to which the proposed approach meets or does not meet the minimum performance or capability requirements through an assessment of the strengths, weaknesses, deficiencies, and risks of a proposal.

**Methodologies.** One of two distinct methodologies, as outlined below, may be used to evaluate the technical approach and related risk:

*Methodology 1* includes risk associated with the technical approach in a single rating. The combined technical/risk rating includes consideration of risk in conjunction with the strengths, weaknesses, and deficiencies in determining technical ratings. Combined technical/risk evaluations shall utilize the combined technical/risk ratings listed in the following Table 1.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Outstanding</td>
<td>Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.</td>
</tr>
<tr>
<td>Good</td>
<td>Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.</td>
</tr>
<tr>
<td>Acceptable</td>
<td>Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.</td>
</tr>
<tr>
<td>Marginal</td>
<td>Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.</td>
</tr>
</tbody>
</table>
Methodology 2: Separate Technical/Risk Rating Process:

**Technical Rating.** The offeror’s technical solution will be rated separately from the risk associated with its technical approach. The technical rating evaluates the quality of the offeror’s technical solution for meeting the Government’s requirement. The risk rating considers the risk associated with the technical approach in meeting the requirement. Technical evaluations shall utilize the ratings listed in the Tables 2 or 3:

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Outstanding</td>
<td>Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. The proposal contains multiple strengths and no deficiencies.</td>
</tr>
<tr>
<td>Good</td>
<td>Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains at least one strength and no deficiencies.</td>
</tr>
<tr>
<td>Acceptable</td>
<td>Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Proposal has no strengths that exceed specified performance or capability requirements and has no significant deficiencies.</td>
</tr>
<tr>
<td>Marginal</td>
<td>Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements.</td>
</tr>
<tr>
<td>Unacceptable</td>
<td>Proposal does not meet requirements and contains one or more deficiencies. Proposal is not awardable.</td>
</tr>
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</table>

**Technical Risk Rating.** Assessment of technical risk, which is manifested by the identification of weakness(es), considers potential for disruption of schedule, increased costs, degradation of performance, the need for increased Government oversight, or the likelihood of unsuccessful contract performance. Technical risk shall be rated using the ratings listed in the following Table 3. For firm-fixed-price contracts, the reference to increased cost may be removed from the risk rating descriptions.

<table>
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<tr>
<th>Rating</th>
<th>Description</th>
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<tbody>
<tr>
<td>Low</td>
<td>Has little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties.</td>
</tr>
</tbody>
</table>
Past Performance Evaluation. Past performance evaluation results in an assessment of the offeror’s probability of meeting the solicitation requirements. It considers each offeror’s demonstrated recent and relevant record of performance in supplying products and services that met the contract requirements. One performance confidence assessment rating is assigned for each offeror after evaluating the offeror’s recent past performance, focusing on performance that is relevant to the contract requirements. (see FAR 15.305). There are two aspects to the past performance evaluation:

1. Relevancy of contractual work performed; and

2. How well the contractual work was performed.

The first is to evaluate the offeror’s past performance to determine how relevant a recent effort accomplished by the offeror is to the effort to be acquired through the source selection. The criteria to establish what is recent and relevant shall be unique to each source selection and shall be stated in the solicitation. In establishing what is relevant for the acquisition, consideration should be given to those aspects of an offeror’s contract history that would give the greatest ability to measure whether the offeror will satisfy the current procurement. Common aspects of relevancy include similarity of service/support, complexity, dollar value, contract type, and degree of subcontract/teaming.

There are four levels of relevancy as shown in the following Table 4. When source selections require a greater level of discrimination within the past performance evaluation, the SST shall use all four of the relevancy ratings identified below. However, for those source selections requiring less discrimination in the past performance evaluation, the past performance evaluation team may use, as a minimum, “Relevant” and “Not Relevant” past performance ratings. The Source Selection Plan (SSP) shall clearly identify the treatment of relevancy within the past performance evaluation. With respect to relevancy, more relevant past performance will typically be a stronger predictor of future success and have more influence on the past performance confidence assessment than past performance of lesser relevance.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Relevant</td>
<td>Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.</td>
</tr>
</tbody>
</table>
Relevant | Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
---|---
Somewhat Relevant | Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant | Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

The second aspect of the past performance evaluation is to determine how well the contractor performed on the contracts. The past performance evaluation performed in support of a current source selection does not establish, create, or change the existing record and history of the offeror’s past performance on past contracts; rather, the past performance evaluation process gathers information from customers on how well the offeror performed those past contracts.

Sources of Past Performance Information for Evaluation are as follows:

1. Past performance information shall be obtained from any other sources available to the Government, to include, but not limited to, the Past Performance Information Retrieval System (PPIRS), Federal Awardee Performance and Integrity Information System (FAPIIS), Electronic Subcontract Reporting System (eSRS), or other databases; interviews with Program Managers, Contracting Officers, and Fee Determining Officials; and the Defense Contract Management Agency (DCMA).

2. Past performance information may be provided by the offeror, as solicited.

3. Past performance information may be obtained from questionnaires tailored to the circumstances of the acquisition.

The Past Performance Evaluation Team will review this past performance information and determine the quality and usefulness as it applies to performance confidence assessment.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Substantial Confidence</td>
<td>Based on the offeror’s recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.</td>
</tr>
<tr>
<td>Satisfactory Confidence</td>
<td>Based on the offeror’s recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.</td>
</tr>
<tr>
<td>Limited Confidence</td>
<td>Based on the offeror’s recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort.</td>
</tr>
<tr>
<td>No Confidence</td>
<td>Based on the offeror’s recent/relevant performance record, the Government has no expectation that the offeror will be able to successfully perform the required effort.</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Unknown Confidence (Neutral)</td>
<td>No recent/relevant performance record is available or the offeror’s performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned.</td>
</tr>
</tbody>
</table>

Small Business Evaluation. When required, the SST shall evaluate the extent of participation of small business concerns. Requirements for considering history of small business utilization are outlined at FAR 15.304(c)(3)(ii).

Pub. L. 109-461 (the Veterans First Contracting Program), requires VA to provide priority and establish special acquisition methods to increase contracting opportunities for SDVOSBs/VOSBs—both above and below the simplified acquisition threshold (SAT). Set-aside under the Veterans First Contracting Program in subpart 819.70 have precedence over other small business set-asides referenced in FAR part 19.

When using a contracting preference under FAR part 19, (for example, a women-owned small business set-aside), contracting officers shall give priority to small business concerns verified as owned and controlled by veterans pursuant to subpart 819.70, if such business concern(s) also meet the requirements of that contracting preference.

The ratings used for the small business evaluation will be dependent on the small business evaluation methodology used. When evaluating small business participation as a stand-alone evaluation factor or a subfactor under the technical factor, there are two rating options as follows:

1. Use the ratings acceptable and unacceptable only (i.e., pass/fail), or

2. Use all ratings outlined in Table 1 or 2, depending on the treatment of risk. References to the term “requirements” in the technical rating description at Table 1 or 2 shall equate to small business requirements, often reflected in the RFP as small business objectives.

When small business participation is not evaluated as a stand-alone evaluation factor or subfactor but rather is considered within the evaluation of one of the technical subfactors, a separate small business rating is not applied. However, the small business participation shall be considered in determining the appropriate technical rating to be applied. References to the term “requirements” in the technical ratings description at Tables 1 or 2 shall equate to small business requirements, often reflected in the RFP as small business objectives.

3.2 Documentation of Initial Evaluation Results: Following the initial round of evaluations, the Source Selection Evaluation Board (SSEB) Chairperson will consolidate the inputs from each of the evaluation teams for presentation to the SSA. The Contracting Officer and the SSEB Chairperson shall ensure that proposals are
evaluated solely on the criteria contained in Section M of the solicitation. All evaluation records and narratives shall be reviewed by the Contracting Officer, Legal Counsel, and the SSEB Chairperson for completeness and compliance with the solicitation. When an SSAC has been established, it will consolidate the advice and recommendations from the SSAC into a written comparative analysis and recommendation for use by the SSA in making the best-value decision. It will ensure that minority opinions within the SSAC are documented and included within the comparative analysis.

Based upon review of the initial evaluation results the SSA will decide to either (1) approve award without discussions, or (2) enter into the discussion process.

3.3 Award without Discussions: In rare circumstances, the SSA may choose to award a contract on the basis of the initial proposals received without conducting discussions. Offerors may be given a chance to clarify certain aspects of their proposal and to resolve minor or clerical mistakes. However, offerors are not given an opportunity to respond to any identified weaknesses or deficiencies or revise their proposals. Instead, the SSA makes a best-value decision based upon the evaluations of the initial proposal as submitted. In accordance with FAR 15.209 – Solicitation provisions and contract clauses, to award without discussions, the RFP must contain the solicitation provision at FAR 52.215-1, which notifies offerors that the Government intends to evaluate proposals and award a contract without discussions. This clause provides incentive to offerors to provide in their initial proposal their best terms from a cost or price and technical standpoint as there may not be an opportunity to revise their proposals.

The process of engaging with industry after proposal submission affords the Government the opportunity to effectively understand and evaluate a proposal and permits industry the opportunity to clearly explain any aspects of a proposal that appear to be deficient, ambiguous or non-compliant. Such dialogue leads to more efficient, effective and improved source selections. Therefore, award without discussions should only occur in limited circumstances.

If the SSA chooses to award without discussions, the SSA shall prepare a Source Selection Decision Document (SSDD). Once the SSDD is signed and all contractual requirements have been met (e.g., Congressional Notification, Equal Employment Opportunity Compliance.), the Contracting Officer may award the contract. Congressional notification may be required in accordance with FAR 5.303. For Section 8(A) Set Asides, the SBA shall be notified in accordance with FAR 19.804. For Small Business Programs, the apparent unsuccessful offerors shall be provided the pre-award notice required by FAR 15.503.

3.4 Discussion Process: Discussions are highly recommended for source selections. The primary objective of discussions is to maximize VA’s ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

If discussions are to be conducted, the Contracting Officer and SSA shall establish a competitive range based on the ratings of each proposal against all evaluation criteria
(see FAR 15.306(c)). Prior to the establishment of the competitive range, and after the decision to conduct discussions has been made, the Contracting Officer may enter into limited communications with offerors whose inclusion or exclusion from the competitive range is uncertain. These communications are limited in accordance with FAR 15.306(b)(1). The establishment of the competitive range is formally documented by the Contracting Officer in a competitive range determination. The Contracting Officer shall only enter discussions with those offerors determined to be in the competitive range.

Discussions shall be tailored to each offeror’s proposal within the competitive range and only the Contracting Officer may conduct these discussions. The scope and extent of discussions are a matter of Contracting Officer’s judgment. At a minimum the SSEB through the Contracting Officer shall discuss with each offeror in the competitive range the following:

1. Any adverse past performance information to which the offeror has not yet had an opportunity to respond;

2. Significant weaknesses; and

3. Deficiencies that have been identified during the evaluation. This is accomplished through the release of Evaluation Notices (ENs). ENs are prepared by the SSEB and reviewed by the Contracting Officer and Legal Counsel. All ENs shall clearly indicate the type of exchange being conducted (e.g. clarification, communication, etc.). Any EN addressing a proposal deficiency or weakness shall clearly indicate that a deficiency/weakness exists. The Contracting Officer is encouraged to discuss other aspects of the offeror’s proposal that could in the opinion of the Contracting Officer be altered or explained to enhance materially the proposal’s potential for award. However, the Contracting Officer is not required to discuss every area where the proposal could be improved as outlined at FAR 15.306(d) and (e). All discussions shall be documented in writing.

3.5 Final Proposal Revisions: At the conclusion of discussions, each offeror within the competitive range shall be given an opportunity to submit a Final Proposal Revision (FPR) by a common cutoff date and time established by the Contracting Officer (FAR 15.307(b)). When the Contracting Officer is not the SSA, the Contracting Officer shall obtain the SSA’s concurrence prior to releasing the FPR request. After receipt of the FPR, the SSEB shall complete evaluations of the FPRs. The evaluation criteria from Section M or equivalent solicitation provision shall continue to be the basis for evaluation.

3.6 Documentation of Final Evaluation Results:

The SSEB shall prepare documentation of the evaluation results. The format should be in a written narrative report, although in rare instances, a decision briefing may be acceptable, depending on the complexity of the acquisition. The report shall be in sufficient detail to serve as a clear and concise record of the source selection decision
and shall be included in the contract file (eCMS) see Chapter 4)). When only a decision briefing is used, it should contain supporting narrative or note pages to serve as a complete record of the decision process. The report or briefing charts with supporting narratives or script must be suitable to serve as the official record of SSEB proceedings in support of source selections. The results of the evaluation shall be presented to the SSAC (when used) and to the SSA. In the event that there is significant disagreement among the SSEB members regarding the evaluation results that should be presented to the SSAC (when used) and the SSA, a minority opinion(s) shall also be presented at the decision briefing providing the SSA with sufficient information to fully consider the minority view(s).

3.7 Conduct and Documentation of Comparative Analysis: When an SSAC is used, the SSAC shall review the evaluation and findings of the SSEB to ensure the accuracy, consistency, and supportability in accordance with the evaluation criteria and shall provide advice, analysis, briefings, and consultation as requested by the SSA, which shall culminate in a written comparative analysis of proposals and award recommendation for the SSA’s consideration.

In the event that there is significant disagreement among the SSAC members regarding the recommendation, a minority opinion shall be documented and presented to the SSA as part of the comparative analysis.

When an SSAC is not used, the SSEB should not conduct a comparative analysis of the proposals or make an award recommendation unless specifically requested by the SSA or required by the SSP.

3.8 Best-Value Decision: The SSA shall select the source whose proposal offers the best value to the Government in accordance with established criteria in Section M or equivalent solicitation provision (see FAR Part 12).

This best-value decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation, considering recommendations and minority opinions presented to the SSA. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA’s independent judgment.

The SSA shall document the supporting rationale in the Source Selection Decision Document (SSDD). The SSDD shall—

a. Be prepared for all source selections;

b. Be the single summary document supporting selection of the best value proposal consistent with the stated evaluation criteria;

c. Reflect the SSA’s independent, integrated, comparative assessment and decision;
d. Clearly explain the decision and document the reasoning used by the SSA to reach the decision consistent with FAR 15.308;

e. Include all rationale for any business judgments—tradeoffs made or relied on by the SSA (e.g., including benefits associated with additional costs); and

f. Be included in the source selection file in eCMS (see Chapter 4).

The SSDD is fully releasable to the Government Accountability Office (GAO) and others authorized to receive proprietary and source selection information. However, consultation with the source selection attorney shall be made prior to the release of any source selection material. When releasing a copy of the SSDD to offerors or to anyone not authorized to receive proprietary and source selection information, redacted material shall be limited to that which is proprietary and that which shall continue to be protected as source selection information. The need to redact such information is not a sufficient reason to refrain from preparing a properly written SSDD (see Appendix A, Attachment 1 - Security Considerations).

3.9 Notification of Unsuccessful Offerors: The Contracting Officer should promptly notify unsuccessful offerors in writing whenever their proposals are eliminated from the competition or after contract award, also known as pre-award and post-award notices. The type of information that must be included in the notice is dependent on whether it is pre or post award information. The following figure provides a side-by-side comparison of the differences between pre-award and post-award notices:

Comparison of Pre-award and Post-award Notices

<table>
<thead>
<tr>
<th>Who Must Be Notified?</th>
<th>Pre-Award Notice</th>
<th>Post-Award Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any offeror whose proposal was excluded from the competitive range or otherwise eliminated from the competition before contract award.</td>
<td>Any offeror whose proposal was in the competitive range but was not selected for award or who had not received a pre-award notice.</td>
<td></td>
</tr>
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<table>
<thead>
<tr>
<th>When Must it be Sent?</th>
<th>Pre-Award Notice</th>
<th>Post-Award Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promptly after the offeror’s proposal was eliminated from the competition.</td>
<td>Within 3 days after the date of contract award.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What is Included in the Notice?</th>
<th>Pre-Award Notice</th>
<th>Post-Award Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>A summary of the basis for the determination</td>
<td>Number of offerors solicited;</td>
<td></td>
</tr>
<tr>
<td>A statement that the Government will not consider any further proposal revisions from the offeror.</td>
<td>Number of proposals received;</td>
<td></td>
</tr>
<tr>
<td>Name(s) and address(es) of awardee(s)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Note:
Small business offerors are entitled to additional information as described at FAR 15.503.

After contract award and upon request from an offeror who previously received a pre-award notice, the Contracting Officer must provide the offeror the information normally provided as part of a post-award notice.

- Items, quantities, and unit prices of each awardee. If listing the unit prices is impracticable, include only the total contract price. (However, upon request, the items, quantities, and any stated unit prices of each award shall be made publicly available.)
- A summary of the reason(s) the offeror’s proposal was not accepted, unless the price information readily reveals the reason.

3.10 Debriefings: When requested, the Contracting Officer must ensure offerors are debriefed in accordance with FAR 15.505 and FAR 15.506, as applicable and shall document the debriefing(s) provided to each offeror. At the request of the Contracting Officer, members of the SST shall participate in debriefings.
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Security Considerations

A.1 Release of Source Selection Information and Contractor Proposal Information:

The Procurement Integrity Act precludes individuals from knowingly disclosing source selection information and contractor bid or proposal information before award of a Federal contract to which the information relates. The Contracting Officer, after consulting with legal counsel, is authorized to approve release of source selection information (before and after contract award) to other authorized Government officials who have signed a non-disclosure statement providing the release would not jeopardize the integrity or successful completion of the procurement.

A.2 Security/Ethics Briefing:

Ensure all SST personnel attend a security/ethics briefing that emphasizes that each SST:

1) Is responsible for security of the evaluation and proposal materials and other source selection and contractor bid or proposal information related to the procurement;

2) Must be knowledgeable of, and adhere to, governing security procedures and regulations;

3) Will not discuss, communicate, reveal participation in the SST, or otherwise deal on matters related to the source selection with any individual not assigned to the SST, unless authorized, (as stated above – Release of Source Selection Information and Contractor Proposal Information), and then only within appropriately secure areas; and

4) Will challenge the presence of any apparent unauthorized individual within the SST physical location.

A.3 Required Certificates and Reports

Each SST member (including support personnel) must sign a certificate that addresses nondisclosure of information, conflicts of interest, and rules of conduct (see sample certificate at Figure 1).
a) Proposal and evaluation materials shall be handled that is consistent with “For Official Use Only” (FOUO) or a higher security classification;

b) Establish sufficient safeguards to protect the material whether it is in the possession of the SST members or it is being disseminated, reproduced, transmitted, or stored; and

c) Establish appropriate procedures for disposal (e.g., shredding or burn bag disposal) of the material when it is no longer required by the SST.

A.4 **Handling of Source Selection Materials:**

a) Proposal and evaluation materials shall be handled that is consistent with “For Official Use Only” (FOUO) or a higher security classification;

b) Establish sufficient safeguards to protect the material whether it is in the possession of the SST members or it is being disseminated, reproduced, transmitted, or stored; and

c) Establish appropriate procedures for disposal (e.g., shredding or burn bag disposal) of the material when it is no longer required by the ST.

A.5 **Security of Physical Facilities:**

In more complex source selections, you should identify the location of the SSEB early in the process, and establish procedures to ensure the security of the source selection physical facilities. These procedures may include:

a. Requiring identification to access the SST area and requiring authorized visitors (e.g., maintenance/service personnel) to sign in and out;

b. Ensuring access points to the facilities are either manned at all times by a representative of the SSO or are kept locked (with appropriate key or password control procedures);

c. Establishing procedures for approving visitors to the facilities; and

d. Conducting security inspections and spot checks.

A.6 **Responsibilities:**

All SST members are responsible for the security of source selection information. In more complex source selections, it may be beneficial to designate certain members of the SST to oversee and/or perform security control functions. These duties may be collateral duties or full-time duties of the team member.
SOURCE SELECTION PARTICIPATION AGREEMENT

Important! This Agreement concerns a matter within the jurisdiction of a United States government agency. This agreement prohibits you from making false, fictitious, or fraudulent statements and/or certifications. If you do so, you may be subject to prosecution under 18 U.S.C. §1001.

AGREEMENT

1. This Agreement applies to individuals involved in Solicitation [INSERT RFP NUMBER], also known as the [INSERT PROGRAM NAME] acquisition.

2. This Agreement contains the rules of conduct relating to this acquisition. It includes rules of conduct regarding conflicts of interest as well as rules of conduct regarding the safeguarding of confidential information.

3. Your signature on this Agreement indicates that you have read this Agreement and agree to be bound by its terms.

TERMS

4. I have read, understand and will abide by the requirements of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the Federal Acquisition Regulation (FAR) 3.104. I understand that I may request and obtain a copy of FAR 3.104 from the Contracting Officer.

5. Except as set forth below, I do not presently hold, and will not obtain during my participation in this acquisition, any financial interest* or affiliation** in any reasonably likely offeror or subcontractor for this acquisition.

6. To the best of my knowledge, and except as set forth below, my spouse and dependent children do not have a financial interest* or affiliation** in any reasonably likely offeror or subcontractor for this acquisition.

7. To the best of my knowledge, and except as set forth below, none of the following is a reasonably likely offeror or proposed subcontractor for this acquisition, or represents a reasonably likely offeror or proposed subcontractor with regard to this acquisition:
• any person or company with whom I have or am seeking a business, contractual or other financial relationship that involves other than a routine consumer transaction;
• my spouse and dependent children;
• any person or company with whom I have been affiliated within the last year; and
• any organization in which I am an active participant.

______________________________________________________________

______________________________________________________________

*Financial Interest - Any continuing financial interest (such as through a pension or retirement plan, shared income, continuing termination payments, or other arrangements as a result of any current or prior employment or business or professional association) or any financial interest through legal or beneficial ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

**Affiliation - A relationship as an employee, officer, owner, director, member, trustee, partner, advisor, agent, representative, or consultant; or a person having any understanding, plans or pending contacts regarding such a relationship in the future. (This includes sending resumes, making telephone inquiries or any act that reasonably could be construed as an indication of interest in a future affiliation.)

  8. I understand that I may request a statement from the Contracting Officer as to whether a person or company is considered to be a reasonably likely offeror or subcontractor.

  9. I will not knowingly disclose any contractor bid or proposal information or source selection information regarding this acquisition directly or indirectly to any person other than a person authorized in accordance with FAR 3.104 to receive such information.

10. I will observe the following rules during the conduct of the acquisition:

a. I will not solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of any reasonably likely offeror or subcontractor for this acquisition.

b. I will not ask for, demand, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any gratuity, favor, discount, entertainment, hospitality, loan, forbearance or other thing of value from any officer, employee, representative, agent, or consultant of any reasonably likely
offeror or subcontractor for this acquisition, unless permitted under Title 5 Code of Federal Regulations Part 2635, Subpart B.

c. I will instruct members of my parent or home organization not to divulge my participation in the evaluation and source selection process or my physical location while participating in the evaluation and source selection process to unauthorized persons.

d. I understand that all communications with offerors or their subcontractors concerning this acquisition must be made by/through the Contracting Officer, or the Contracting Officer’s designee. I will divert all attempted communications by offerors or subcontractors’ representatives or any other unauthorized person to the Contracting Officer, and advise the Chairperson of the SSAC or the Chairperson of the SSEB and Legal Counsel.

e. I will not discuss evaluation or source selection matters, including proposal information, with any unauthorized individuals (including Government personnel), even after the announcement of the successful contractor, unless authorized by proper authority. All discussions of evaluation/source selection matters with other SSEB/SSAC members shall be conducted solely in those areas designated for deliberations.

11. I realize that my actions in connection with my participation in this evaluation and source selection are subject to intense scrutiny and I will conduct myself in a way that will not adversely affect the confidence of the public in the source selection process. I will avoid any action, whether or not prohibited, that could result in or create the appearance of my losing independence or impartiality. I will not use my public office for private gain, and I agree not to engage in any personal business or professional activity, or enter into any financial transaction, that involves or appears to involve, the direct or indirect use of "inside information" to further a private gain for myself or others.

12. I understand that my obligations under this certification are of a continuing nature, and if anything takes place which would cause a change to any statement, or create a violation of any representation or rule of conduct herein, I will immediately bring such matter to the attention of the Chairperson of the SSAC, SSEB, and the Contracting Officer.

CERTIFICATION

13. I agree to the Terms of this Agreement and certify that I have read and understand the above Agreement. I further certify that the statements made herein are true and correct.
Signature:_______________________________________________

Name (Printed):_____________________________________________

Organization:______________________________________________

Date:_____________________________________________________

SOURCE SELECTION INFORMATION – SEE FAR 2.101 AND 3.104
FOR OFFICIAL USE ONLY
Debriefing Guidelines

A.1. Purpose of Debriefing:

The Contracting Officer must debrief an offeror upon receipt of its written and timely request (See FAR 15.503 and 15.505). The debriefing serves to assure offerors that the Government properly evaluated their proposals and made the award determination in accordance with the RFP. Since each offeror puts considerable resources into preparing and submitting a proposal, fairness dictates that the Contracting Officer promptly debrief offerors and explain why a proposal was excluded from the competitive range or was successful or unsuccessful. Timely and thorough debriefings increase competition, encourage offerors to continue to invest resources in the Government marketplace, and enhance the Government’s relationship and credibility with industry. The debriefing also provides feedback to offerors to assist in improving future proposal submissions. An effective debriefing often deters a protest by demonstrating that the Government conducted a thorough, fair evaluation and made a sound decision according to the established source selection methodology.

A.2. Requirements:

See FAR 15.505, Preaward debriefing of offerors; and FAR 15.506, Postaward debriefing of offerors for requirements relative to debriefings. Also reference FAR 3.104-4, Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

A.3. Notification of Debriefing:

The Contracting Officer should inform the offeror of the scheduled debriefing date by electronic means with immediate acknowledgment requested and should follow up with written notification to the offeror. If the offeror requests a later date, the Contracting Officer should require the offeror to acknowledge in writing that it was offered an earlier date, but requested the later date instead.

A.4. Debriefing Location:

The Contracting Officer is responsible for selecting the location of the debriefing. The location should provide a professional and non-distracting environment. Debriefings are normally held at Government facilities, however, they may be held at any facility that is mutually acceptable to all parties involved (see FAR 15.505). Although face-to-face debriefings are frequently used, the Contracting Officer may also conduct a debriefing by telephone or electronic means. It may be burdensome for an offeror to attend in person and the needs of the offeror should be afforded due consideration. Likewise, if
some of the Government personnel are located at an installation other than where the debriefing will be conducted, they may participate by telephone or videoconference.

A.5. Debriefing Attendees:

**Government Personnel.** The Contracting Officer should chair and control the debriefing and select the Government attendees. It is extremely important to ensure appropriate Government personnel attend so that a meaningful debriefing is achieved. The Contracting Officer’s Legal Counsel should participate in preparation of the debriefing and also may attend the debriefing. Legal Counsel must attend the debriefing when the offeror’s Legal Counsel will be in attendance. In the event there are indicators that a protest is likely, inform Legal Counsel. However, the Contracting Officer should not deny a debriefing because a protest is threatened or has already been filed.

**Debriefed Offeror Personnel.** The Contracting Officer should ask the offeror to identify all of the firm’s individuals by name and position who will attend the debriefing. Normally, do not restrict the number of personnel the debriefed offeror may bring unless there are space limitations.

A.6. Preparing for the Debriefing:

The Contracting Officer should ensure that documents relevant to the source selection have been thoroughly reviewed by the debriefing team and are readily available to the Government during the debriefing. A best practice is to have those documents available, during the debriefing, in a separate Government caucus room.

It is recommended that the Contracting Officer conduct a “dry run” prior of the actual debrief because role-playing is a vital part of the dry run. Teams are encouraged to simulate interactions with disappointed or disgruntled offerors and practice addressing questions on contentious issues. The Contracting Officer should develop a set of anticipated questions that offerors may ask at the debriefing (see Section A.9 for sample questions). In anticipating possible questions, it is often useful to review questions asked during the discussion phase (if held) of the competition. The Contracting Officer should also ask each offeror scheduled for a debriefing to submit advance written questions and it would be in the Contracting Officer’s best interest to coordinate responses with Legal Counsel.

A poorly prepared debriefing is the surest way to lose the confidence of the offeror and increase the prospects of a protest. Because debriefings are time sensitive, preparation must begin before attend the debriefing on their roles, level of participation and expected demeanor during the debriefing.

A.7. Outline for the Debriefing:

The following is a general outline for a typical debriefing. See FAR 15.505 (preaward) and FAR 15.506 (postaward) for specific requirements:
1. Introduction
2. Purpose of the Debriefing
3. Ground Rules and Agenda
4. Source Selection Process
5. Evaluation Factors/Subfactors
6. Evaluation Results for the Offeror’s Proposal
7. Rationale for Eliminating Offeror from Competition
8. Rationale for Award Decision Based on the SSA’s Decision Document (postaward debriefing only)
9. Responses to Relevant Questions
10. The Contracting Officer’s statement that the debrief has concluded.

A.8 Conducting the Debriefing:

**Roles.** The Contracting Officer chairs and controls the debriefing, but may defer to others for specific portions of the debriefing and must control all exchanges. There are many different approaches that the Contracting Officer may take in leading the debriefing. The Contracting Officer may—

1. Conduct the entire debriefing presentation and defer to his Government team to answer questions as needed; or

2. Start the debriefing and allow the subject matter experts to present their portions. An example is the Technical Team Leader presents the Technical evaluation portion of the presentation.

**Questions.** At the on-set of the debriefing, the Contracting Officer should advise offerors that the Government believes the presentation will address any questions they may have. Additional questions may be answered during the debrief. The Contracting Officer should be open to discussions, but not drawn into a debate. A Government caucus may be required to address some questions. The Government should request that the questions be written for the caucus as needed.

If the debriefing team cannot adequately answer additional questions presented in writing by the offeror at the debriefing, the Contracting Officer should provide written answers as soon as possible. However, promising additional information at a later date should be avoided if possible, because the period for protest may be deemed to start from the time new relevant information is provided.

**Information Not Appropriate to Disclose.** The debriefing team shall not—

1. Disclose documentation that was not presented to/considered by the SSA. The criticality of any postaward debriefing is the SSA award decision and whether that decision is well supported and resulted from a source selection conducted in a thorough, fair and sound manner consistent with the requirements and source
selection methodology established in the RFP. The key of any preaward debriefing is the offeror’s elimination from the competitive range;

2. Discuss validity of requirements or prohibited information (see FAR 15.506(e));

3. Provide names of individuals providing reference information about an offeror’s past performance. In addition, the names of individuals on the SST, not participating in the debriefing, should not be disclosed. However, the name of the SSA may be revealed in postaward debriefings; and

4. Disclose any unit prices which are not freely releasable under the Freedom of Information Act. Even though the FAR includes unit prices in the list of information to be provided in a debriefing, unit prices may not be releasable.

Offeror Feedback. The Contracting Officer should allow the offeror an opportunity to provide feedback regarding the quality of the solicitation document, e.g., proposal instructions, the appropriateness of discussions, and the source selection process itself. This information may be used as “lessons learned” for future acquisitions.

Source Selection File: The debriefing slides, offeror’s request for debriefing (if any), previously submitted questions, any handouts, a list of written questions/answers, and any other relevant documents, must be included in the source selection file see Chapter 4).

A.9. Sample Offeror Questions That May Be Used for “Dry Run”:

As previously stated, teams are encouraged to have a dry run prior to the actual debrief. The following is a list of sample questions the team should be prepared to address during the debriefing. Answers should be tailored to the unique circumstances of each acquisition and should, where possible, be tied directly to language within the RFP (particularly Sections L and M). The “notes” below are provided as points for consideration and are not intended to be responses.

Topic Area 1: The Government’s evaluation of the significant weaknesses or deficiencies in the proposal.

a) Please explain the basis for the strengths, weaknesses, or deficiencies in our proposal for each evaluation factor and subfactor?

NOTE: Typically this is done as part of the debriefing presentation; however, you may not disclose detailed information regarding the strengths, weaknesses and/or deficiencies in other proposals. Such a disclosure could amount to a point-by-point comparison of proposals, prohibited per FAR 15.506(e), and/or could involve disclosure of protected/privileged information. However, if a strength is evident from the awarded contract (for example, a more attractive
delivery schedule) the Contracting Officer may want to highlight that fact, but consult Legal Counsel for guidance and advice.

b) Did you discuss all weaknesses, significant weaknesses, and deficiencies?

**NOTE**: If discussions were held, all significant weaknesses and deficiencies, at a minimum, should have been addressed and documented. The FAR does not require discussion of all weaknesses, although it is considered a best practice.

c) Were there any solicitation requirements that we failed to address? If so, what were they?

**NOTE**: If discussions were held, these matters should have been addressed and documented.

d) How is the evaluation consistent with Sections L and M of the solicitation?

e) Were any deficiencies identified by the Government during discussions not adequately addressed in our response(s)? If so, how did this affect the evaluation process?

f) Were there any specific considerations that precluded us from being selected as the awardee? If so, what were those considerations?

**NOTE**: If discussions were held, these matters should have been addressed.

g) What, if anything, did the Government desire that was missing from our proposal?

**NOTE**: Be careful how you answer—the Government does **not** evaluate based on “desires” but rather on requirements contained within the RFP.

h) Please explain how past performance was evaluated. What was our rating? How was that rating applied to the source selection process?

i) Was experience evaluated? If so, what was our rating and how was that information used in the source selection process?

j) Please explain the procedure for the evaluation of risk? What risks were identified in our proposal? How did they impact the rating of our proposal?

**Topic Area 2**: The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror; and the overall ranking of all offerors, when any ranking was developed by the agency during the source selection. FAR 15.506(e): the debriefing shall **not** include point by-point comparisons of the debriefed
offeror’s proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by FAR 24.202 or exempt from release under the Freedom of Information Act.

a) Provide the evaluated cost or price and technical, management, and past performance ratings for our proposal and all other offerors.

**NOTE:** Information on the overall evaluated cost or price and technical ratings is not provided for all offerors; only for the successful offeror and the offeror being debriefed.

b) Provide the overall ranking for all offerors.

**NOTE:** Generally an overall ranking is not developed. However, if an overall ranking was developed during the source selection process then this shall be provided during the debriefing. The name of every offeror shall be redacted except for the offeror being debriefed and the successful offeror(s).

c) In what areas was our proposal considered “overpriced”?

d) Were we compliant with all technical requirements?

**NOTE:** If discussions were held, these matters should have been addressed.

e) In the risk portion of the technical/management area, what criteria did the Government use to determine the final evaluation ratings? How was this risk reflected in the other areas of the evaluation?

f) Was there anything not required by the solicitation that we could have offered that might have made us more competitive for the award?

**NOTE:** An answer to this question would be conjecture, which is not appropriate.

g) Were our responses to Evaluation Notices (ENs) adequate? If not, how could we have improved our responses? How were our responses to the ENs on past performance evaluated?

**Topic Area 3: A summary of the rationale for award.**

a) Explain in detail the methodology used to determine which proposal offered the greatest overall value to the Government, especially with respect to any comparisons/trade-offs made between technical factors and costs proposed, and

b) Provide a copy of the SSDD.
NOTE: If the SSDD is to be released to offerors, it shall be redacted and coordination with Legal Counsel shall be obtained.

**Topic Area 4:** Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

NOTE: Answers to questions relative to source selection procedures should reference Section M language.

a) Describe the evaluation process used for this procurement.

b) How important was cost in the source selection decision relative to past performance and technical considerations?

c) If the costs were “normalized” explain how the normalization was conducted.

d) Was a cost realism analysis used? If so, describe the process used.

e) Did the Government prepare an independent cost estimate?

f) What was the basis for not selecting us?

g) Did the Government make a cost/technical trade-off?

h) In order of importance, which evaluation criteria were the most critical to the determination of our overall rating?

i) What were the most critical evaluation criteria that proved to be tiebreakers in the evaluation of proposals?

j) Identify any information not contained in our proposal that was used by the evaluators in assessing our offer.

**Topic Area 5: Other potential questions.**

a) Who was on the Source Selection Advisory Committee?

NOTE: To prevent offerors from contacting individuals after the debriefing and to avoid creating tension in ongoing working relationships on existing Government contracts, do not disclose the names of individual evaluators or members of the SST (e.g., the SSEB, SSAC). However, those people in attendance at the debriefing should be introduced.

b) Did the SSA and the SSAC (if applicable) fully accept the recommendations of their respective staffs (SSAC or SSEB)? If not, why not? Did either reach any
independent determinations? If so, what independent determinations were made?

c) Were there any common areas of weaknesses or deficiencies in the proposals in the competitive range?

**NOTE:** The debriefing team shall avoid point-by-point comparisons of proposals. Additionally, providing detailed information regarding the strengths, weaknesses or deficiencies of other proposals may disclose protected/privileged information (see FAR 15.506(e)).

d) What management structure did the agency consider as optimal for performing the contract? How did our proposal rate against this standard?

**NOTE:** The Government does not have any preconceived ideas regarding how to meet the RFP requirements.

e) Identify any and all evaluation factors, subfactors, and elements not identified in the solicitation that were used to evaluate the proposals.

**NOTE:** There shall never be any evaluation factors, subfactors and/or elements not identified in the solicitation that were used to evaluate proposals.
SAMPLES
Source Selection Non-Disclosure Agreement (NDA)

Name (print):_______________________________________________________
Grade:_____________________________________________________________
Organization:_______________________________________________________
Source Selection____________________________________________________
                           (insert title of SS position)

1. I acknowledge I have been assigned to the source selection indicated above. I have been briefed orally by __________________________and as such, am knowledgeable of Subsection 27(a) of the Office of Federal Procurement Policy Procurement Integrity Act, 41 U.S.C., Section 423, and FAR 3.104. I am aware that unauthorized disclosure of source selection or proprietary information could damage the integrity of this procurement and that the transmission or revelation of such information to unauthorized persons could subject me to prosecution under the Procurement Integrity Laws or under other applicable laws.

2. I do solemnly swear or affirm that I will not divulge, publish, or reveal by word, conduct, or any other means, such information or knowledge, except as necessary to do so in the performance of my official duties related to this source selection and in accordance with the laws of the United States, unless specifically authorized in writing in each and every case by a duly authorized representative of the United States Government. I take this obligation freely, without any mental reservation or purpose of evasion and in the absence of duress.

3. I acknowledge that the information I receive will be given only to persons specifically granted access to the source selection information and may not be further divulged without specific prior written approval from an authorized individual.

4. If, at any time during the source selection process, my participation might result in a real, apparent, possible, or potential conflict of interest, I will immediately report the circumstances to the Source Selection Authority.

5. All personnel are requested to check the applicable block(s):
   o I have submitted a current OGE Form 450 (Confidential Financial Disclosure).
   o I am not required to submit an OGE Form 450.
   o I have submitted a current OGE Form 278 (Public Financial Disclosure)
   o I am not required to submit an OGE Form 278.
I am a non-government employee. I have signed a proprietary information non-disclosure agreement that has been included in the contract between my firm and the government that precludes me from divulging any proprietary data to which I may gain access during the source selection. I have submitted (or will submit) a Conflict of Interest Statement and documentation to the Contracting Officer indicating my personal stock holdings prior to accessing source selection information.

Signature: ________________________________

Date: ________________________________

Debriefing Certificate

I have been debriefed orally by as to my obligation to protect all information to which I have had access during this source selection. I no longer have any material pertinent to this source selection in my possession except material that I have been authorized in writing to retain by the Source Selection Authority. I will not discuss, communicate, transmit, or release any information orally, in writing, or by any other means to anyone after this date unless specifically authorized to do so by a duly authorized representative of the United States Government.

Signature: ________________________________

Date: ________________________________
Conflict of Interest Statement

______________________________________________ SOURCE SELECTION

(Insert acquisition name)

Please review the list of prime contractors and their subcontractors who are offering proposals in response to the Request for Proposal (RFP) for the acquisition identified above with the Contracting Officer. After reviewing the list, check the appropriate boxes, fill in the information requested, and sign:

- I certify that neither I nor my immediate family, to the best of my knowledge, possess any financial interest whatsoever in any company, parent or subsidiary, which is proposing on the acquisition identified above now being considered by the Source Selection Evaluation Board (SSEB) of which I am a member or advisor. Should any company in which I or my immediate family has a financial interest submit a proposal to my source selection team, I will immediately reveal such interest to the SSEB Chairperson and the Contracting Officer.

OR

- I do possess a financial interest in a company that is proposing on or is in a way involved in the acquisition identified above now being considered by the Source Selection Evaluation Board (SSEB) of which I am a member or advisor. (If you have checked this box, please provide a description of your financial interests on the reverse side of this form.) I further acknowledge my obligation to disclose any friendships, family or social relationships, past, present, or planned employment relationships, or any other type of relationship, such as housing or transportation arrangements, which might be perceived as compromising my independent judgment in connection with this Source Selection. (Please make any disclosures on the reverse of this form).

Name (print):____________________________________________

Organization: Phone:_____________________________________

Signature:_______________________________________________

Date:___________________________________________________
Sample Source Selection Decision Document

1. **Decision Statement.** Example: As Source Selection Authority for this acquisition, I have determined that the ______ product/service proposed by Offeror C provides the best overall value to satisfy VHA needs. This selection was made based upon the factors and subfactors established in the solicitation and my integrated assessment and comparison of the strengths, weaknesses, and risks of the proposals submitted in response to the solicitation. This memorandum documents the basis for my decision.

2. Brief description of the product and/or service being procured.

3. Brief description of the basis for award (as set forth in the RFP), including the factors and subfactors against which proposals were measured and their relative order of importance.

4. A list of offerors in the competitive range.

5. Rationale for business judgments and tradeoffs. Include the following:
   - *Succinct comparison of each proposal, focusing on key proposal differences (strengths, weaknesses, and risks) that surfaced in the evaluation and their impact on the acquisition.*
   - *Explanation of specific tradeoffs that led to the decision.*
   - *Explanation of specific benefits of the technically superior offeror(s) and why they are or are not significant enough to warrant any additional cost.*

6. **Summary.** In summary, based on my integrated assessment of all proposals in accordance with the specified evaluation factors and subfactors, it is my decision that Offeror C’s proposal offers the best overall value.
Sample Notice to Unsuccessful Offeror (Pre Award)

VA LETTERHEAD

DATE

Name of Contracting Organization:

SUBJECT: Solicitation Number__________, Program Name________________

COMPANY NAME
ATTN: XXXXXXXXX
ADDRESS
CITY, STATE & ZIP CODE

Dear XXX:

The Government has completed its initial evaluation of the proposals submitted in response to the subject solicitation and regrets to inform you that your proposal has been excluded from the competitive range and thereby eliminated from the competition. Based on the ratings of your proposal that were derived against all of the evaluation criteria, I have determined that your proposal is outside the competitive range because it is not one of the most highly rated proposals, in accordance with the Federal Acquisition Regulation (FAR) 15.306 (c) (1).

In accordance with Section M of the Solicitation, Basis for Award, the Technical Factor is more important than the Performance Risk Factor, the Performance Risk Factor is more important than the Price Factor, and the Price Factor is significantly more important than the Small Business Participation Plan Factor. The non-price factors when combined are significantly more important than the Price Factor. Section M of the Solicitation further states that to receive consideration for award, a rating of no less than “Acceptable” must be achieved for the Technical Factors and each of its Subfactors. After extensive evaluation, your proposal has been rated (provide ratings for the factors and subfactors of the offeror and brief explanation/reasons for the ratings). Those ratings did not place your proposal among those proposals that were most highly rated. This is based primarily on your (explain).

Based on the above and in accordance with the Evaluation Approach, it has been determined that (insert corporation name, corporation division) is outside the competitive range. Further negotiations concerning this acquisition are not contemplated and revisions to your proposal will not be considered. You may request a debriefing in writing within three days after receipt of this notice. The debriefing may be delayed until after award if so requested. However, if you do not request a debriefing within those three days, the Government is not obligated to grant either a preaward or postaward debriefing. Your attention is directed to FAR 15.505 regarding these procedures.
The Government thanks you for your participation in this acquisition and looks forward to your continued interest in future VA business opportunities.

Sincerely,

Contracting Officer’s Name
Sample Notice to Unsuccessful Offeror  
(Post Award)

VA LETTERHEAD

DATE

Name of Contracting Organization:

SUBJECT: Solicitation Number __________, Program Name________________

COMPANY NAME
ATTN: XXXXXXXXX
ADDRESS
CITY, STATE & ZIP CODE

Dear XXX:

Reference your proposal submitted in response to solicitation XXXXXXXXRXXXX for the (Insert TITLE OF SOLICITATION).

Solicitation XXXXXXXXXX was posted to the FEDBIZOPS on DATE to be reviewed by industry for purposes of submitting a proposal. Five (5) proposals were received and an award was made to NAME AND ADDRESS OF SUCCESSFUL OFFEROR.

The Government's final evaluation of your proposal has resulted in the following ratings and total evaluated price. The ratings and total evaluated price of the successful offeror are provided for your information.

<table>
<thead>
<tr>
<th>FACTOR/SUBFACTORS</th>
<th>YOUR OFFER</th>
<th>SUCCESSFUL OFFEROR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Factor</td>
<td>Good</td>
<td>Good</td>
</tr>
<tr>
<td>Operating Requirements Subfactor</td>
<td>Good</td>
<td>Outstanding</td>
</tr>
<tr>
<td>Reliability Sub-Factor</td>
<td>Good</td>
<td>Good</td>
</tr>
<tr>
<td>Physical Requirements Subfactor</td>
<td>Good</td>
<td>Good</td>
</tr>
<tr>
<td>Schedule Factor</td>
<td>Outstanding</td>
<td>Good</td>
</tr>
<tr>
<td>Performance Risk Factor</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Price Factor (Total Evaluated Price)</td>
<td>XXXXXXXXXX</td>
<td>XXXXXXXXXX</td>
</tr>
</tbody>
</table>

Pursuant to the Federal Acquisition Regulation (FAR) 15.506, you are afforded the opportunity to request a debriefing regarding the evaluation of your proposal. Your
request for a debriefing shall be submitted in writing to the undersigned Contracting Officer. Please specify the names and positions of the representatives of your company and team who will attend and include written questions planned for this session.

The Government thanks you for your interest and looks forward to your continued participation on future VA acquisition programs. Should you have any other questions concerning this acquisition kindly contact the undersigned at (XXX) XXXXXXX.

Sincerely,

Contracting Officer’s Name
Sample

Source Selection Appointment Letter

VA LETTERHEAD

NOTE: Used only if someone other than the Contracting Officer is appointed as the SSA

Date:

MEMORANDUM FOR XXXXXXX, Requiring Office (XXXXXXXXX)

SUBJECT: Appointment as Source Selection Authority

1. As the Head of the Contracting Activity (HCA) for (insert name of the VA activity), I hereby designate you, (insert name of individual), the Source Selection Authority (SSA) for the (insert program name) program. This appointment is made per VAAM 8115.303.

2. To support these efforts, the XXXXX will competitively award a contract to perform XXXXX Identify program. A (type, e.g., firm fixed price (FFP)) contract is anticipated, with a potential total value of $XX.XM.

3. As SSA, you are responsible for the proper conduct of the source selection process in accordance with applicable regulations and shall—
   - Supervise and approve the development of the source selection criteria (Sections L, M and adjectival definitions);
   - Ensure SSEB leadership possesses appropriate skills and experience targeted to their SSEB duties; this leadership should be involved in the establishment of the selection criteria;
   - Establish an evaluation schedule for the SSEB commensurate with the complexity of the evaluation; actively manage the achievement of the assigned schedule;
   - Review the interim evaluation results, when discussions are conducted, and approve the competitive range determination;
   - Review the content and scope of discussions/negotiations with offerors;
   - Ensure meaningful discussions have been conducted, authorize closing of discussions; and authorize request for final proposal revisions;
• Review the final evaluation results; conduct tradeoffs in accordance with the selection criteria; select best value offeror(s); and document your selection decision in a Source Selection Decision Memorandum (SDM);

• Ensure that any evaluation results presented to you are substantiated and are consistent with the announced evaluation criteria;

• Ensure at all times conflicts of interest, as well as the appearance of such conflicts, are scrupulously avoided;

• Ensure there is no premature or unauthorized disclosure of proprietary or other source selection information;

• Exercise extreme care to safeguard and protect sensitive information, including the identity of the individuals involved in the source selection evaluation; and

• Appoint subject matter experts and/or other individuals who are necessary for the success of the source selection process.

4. I am advised that you have discussed your appointment with the XXXXX Command Ethics Counselor and you have received an ethics briefing and the Ethics Counselor has conducted the appropriate screening of your financial disclosure report and there are no financial conflicts of interest that would preclude you from performing the duties of the SSA. You are also to consult with an Ethics Counselor should any situation arise which might result in a conflict of interest, or even the appearance of one.

5. The Appointment of the SSA is to you personally; therefore, you do not have the authority to re-delegate this appointment. Promptly notify me if, for any reason, you are unable to complete your duties as SSA.
Sample
Source Selection Advisory Council Appointment Letter

MEMORANDUM FOR (insert name of SSAC member)

SUBJECT: Memorandum of Appointment, Source Selection Advisory Council (SSAC),
(Name of Program)

1. As the Source Selection Authority (SSA) for the subject competitive acquisition, I hereby appoint you to the Source Selection Advisory Council (SSAC). Your temporary duty assignment is requested because of your demonstrated abilities and qualifications.

2. Your appointment as a SSAC member is effective immediately and terminates upon dissolution of the SSAC. Your presence will be required at meetings and conferences and you will complete whatever work is necessary for timely completion of the council's mission. Relief from this assignment will be granted only in the event of a demonstrated emergency.

3. Temporary release from your duties for return to your parent organization may occur. However, you will be called upon to provide assistance and clarification of matters as necessary throughout the process.

4. In connection with your duties as a SSAC member, you will have access to confidential business information and proprietary data submitted by the offerors in response to the Request for Proposal (RFP). The Federal Acquisition Regulation (FAR), under which this source selection is being conducted, requires you to safeguard this information and not release it to any person outside of the source selection process. The laws of the United States prohibit the unauthorized release of confidential business information and proprietary data. Please note that there are criminal and administrative penalties for violation of these laws.

5. The release of any information submitted by an offeror or any information concerning the evaluation of the proposals to any person outside of the source selection and proposal evaluation process will have a serious adverse impact on our ability to continue with the source selection process. Such a release of information could serve as the basis for a lawsuit against the United States and delay the Source Selection for many months. The responsibility for protecting this sensitive information and ensuring that it is not released to unauthorized persons rests with you.
6. Your specific responsibilities are outlined at Enclosure 1; a Source Selection Participation Agreement is at Enclosure 2. You are requested to complete Enclosure 2 and return to:

(Contracting Officer’s Name)
ADDRESS

2 Encls

Name
Source Selection Authority
# SAMPLE
## MILESTONE SCHEDULE

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>Start Date</th>
<th>Completion Date</th>
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<tbody>
<tr>
<td>A Acquisition Planning Activities (e.g., Market Research</td>
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<tr>
<td>Review Previous Similar Acquisitions, Industry Days)</td>
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<td></td>
</tr>
<tr>
<td>B Acquisition Strategy Approved</td>
<td></td>
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<tr>
<td>C Appointment of Source Selection Authority (SSA)</td>
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<tr>
<td>D Acquisition Plan Approved</td>
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<tr>
<td>E Source Selection Plan Approved</td>
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<tr>
<td>F Issue RFP</td>
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<tr>
<td>G Pre-proposal Conference/Site Visit</td>
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<td>H Receive Proposals</td>
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<td>I SSEB Evaluation</td>
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<tr>
<td>J SSAC/SSA Brief</td>
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<tr>
<td>K Competitive Range Determination</td>
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<tr>
<td>L Discussions with Offerors within the Competitive Range</td>
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<tr>
<td>M SSAC/SSA Brief to Request Final Proposal Revisions</td>
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<tr>
<td>N SSAC Prepares Written Comparative Analysis/Award Recommendation</td>
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<td>O Source Selection Decision</td>
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<td>P Phase III Peer Review</td>
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<td>Q Contract Award</td>
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<tr>
<td>R Debriefing of Unsuccessful Offerors</td>
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<tr>
<td>S Post Award Conference</td>
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</tbody>
</table>
SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES
PART M816—TYPES OF CONTRACTS

Subpart M816.1—Selecting Contract Types

Sec.

M816.102 Policies.

Subpart M816.2—Fixed-Price Contracts

M816.203 Fixed-price contracts with economic price adjustment.
M816-203-2 Application.
M816-203-3 Limitations.
M816.203-70 Adjustments based on price indexes of labor or material.

Subpart M816.4—Incentive Contracts

M816.401 General.

Subpart M816.5—Indefinite-Delivery Contracts

M816.504-70 Indefinite-quantity contracts.
M816.505 Ordering.
M816.505-70 Maximum order amounts.

Subpart M816.7—Agreements

M816.703 Basic ordering agreements.
M816.770 Consignment agreements.

ATTACHMENTS:

M816 Attachment A, Sample Evaluation Checklist
M816 Attachment B, Examples of Non-Biological Implantable Devices

APPENDIX:

M816A Appendix A, VA Indefinite-Delivery Indefinite-Quantity (IDIQ) Guide
SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Subpart M816.1—Selecting Contract Types

M816.102 Policies.

(e) The contracting officer shall obtain the approval of the cognizant Head of the Contracting Activity (HCA) or designee before issuing a solicitation that includes time-and-materials or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds $1,000,000.

(f) Excluded from this requirement are solicitations for Architecture/Engineering (A/E) contracts, construction contracts, or professional engineering contracts, and proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair storm damage, etc. (e.g., where FAR 6.302 applies).

Subpart M816.2—Fixed-Price Contracts

M816.203 Fixed-price contracts with economic price adjustment.

M816.203-2 Application.

(c) The contracting officer shall, when contracting by negotiation, use the Federal Acquisition Regulation clauses as prescribed in FAR 16.203-4 (a)(2), (for standard supplies), FAR 16.203-4 (b)(2) (for semi-standard supplies) and FAR 16.203-4 (c)(2) (for actual cost of labor or material). If the Economic Price Adjustments (EPA) clauses in the FAR do not satisfy the conditions stated above and are inappropriate for those prescribed circumstances, the Contracting Officer shall use one of the VA prescribed clauses at VAAR 852.216-71 through 852.216-75.

(d) EPA clauses can be complex and difficult to draft and administer. The contracting officer shall be thoroughly familiar with the market, the costs associated with that market, the cost or price index as the basis for price adjustments, and the relationship between that cost index and the cost components of the contract. For guidance on evaluating sealed bids containing EPA clauses see FAR 14.408-4.

(e) Options may be included in a solicitation, provided the contracting officer fully considers the provisions of FAR 17.202(b) and (c) and complies with the requirements of FAR 17.205.

(f) The use of options where EPA clauses are utilized should not become routine or a standard operating procedure. Careful consideration is required when utilizing EPA clauses in conjunction with contracts with option years.
(g) Prior to including options in a solicitation where usage of EPA clauses may be required, contracting officers should first consider soliciting a one year contract without an EPA clause.

M816.203-3 Limitations.

(a) The HCA or designee, (whom shall be at least one level above the contracting officer), shall review and approve any EPA ceiling adjustment exceeding ten (10) percent. This approval could cover several contracts over a period not to exceed two years and require a review of the adjustment ceiling, when the following conditions are met:

(1) A supplier requests that the ceiling be raised.

(2) Analysis of current market conditions reveals that most supplies of similar supplies or services are affected. If the price ceiling is raised, the contracting officer must modify the contract to reflect the revised ceiling.

M816.203-70 Adjustments based on price indexes of labor or material.

(a) Additional guidance on the clause EPA of Contract Prices Based on a Price Index (VAAR 852.216-71):

(1) There are a number of Consumer Price Indexes (CPIs) prepared by the Department of Labor, as well as, other broad base indexes. When acquiring supplies and services the contracting officer should select the appropriate EPA index.

(2) When acquiring consumer supplies, the most appropriate index might be the Consumer Price Index for All Urban Consumers (CPI-U) 1982-84=100, Not Seasonally Adjusted (see Bureau of Labor Statistics). When acquiring general consumer services, the most appropriate index might be the CPI-U for the specific geographical location where the services are provided.

(b) Additional guidance on the clause Proportional EPA of Contract Price Based on a Price Index (VAAR 852.216-72):

(1) Proportional EPA clauses cover a broad range of potential price change categories. Their use may benefit a contractor who experiences a price increase in one component part of the contract.

(2) When the commodity does not account for 100% of the cost of performing the contracted service or producing the supplies changes in the price of that commodity, the result should be a proportional change to the total contract price or unit price.
(3) The method used to calculate price changes in this index clause differs from the method used in the CPI clause, identified in VAAM 816.203-70(a).

(c) Additional guidance on Economic Price Adjustment—Fuel Surcharge (VAAR 852.216-75):

The fuel cost index, for the purpose of price adjustment under this clause, Economic Price Adjustment—Fuel Surcharge, (VAAR 852.216-75), shall be the "Weekly Retail On-Highway Diesel Prices Index," which is published by the U.S. Department of Energy: U.S. Energy Information Administration.

Subpart M816.4—Incentive Contracts

M816.401 General.

(h) Solicitations that include monetary incentives, regardless of dollar value, shall be issued only after the HCA or designee approves a written Determination & Findings (D&F). Approval authority of the D&F must be no lower than one level below the HCA.

(i) Contracts with incentives require periodic evaluations of the contractor's performance throughout the life of the contract.

(j) Open and on-going communications with the contractor are essential to the successful use of contract incentives.

(k) Benefits of utilizing incentive contracts include:

(1) Allows the VA to assess performance and appropriately recognize the contractor’s accomplishments.

(2) During the evaluation process, the VA has the flexibility to consider both the contractor’s performance levels and the conditions under which these levels are achieved.

(l) Contracting officers should consider the following interrelated factors when recommending an incentive arrangement, i.e., cost, performance, delivery to facilitate the development of an incentive strategy:

(1) Estimated dollar value of the requirement;

(2) Complexity and criticality of the acquisition;

(3) Benefits expected to result from incentivized performance; and,

(4) Contracts and task or delivery orders containing an incentive requires additional administrative and management effort. Consider the availability of VA
resources before employing this method.

(m) The contracting officer shall draft a D&F identifying the factors considered in arriving at a decision to use an incentive arrangement. The HCA or designee, no lower than one level below the HCA, shall sign the D&F. The contracting officer's documentation of the factors considered in the decision to use a monetary incentive and the proposed evaluation plan shall accompany the request for the D&F signed by the HCA, per FAR 16.401(d).

(n) If the contracting officer determines that an incentive type of contract is appropriate, an Incentive Review Board (IRB) should be appointed and an evaluation plan must be developed, as part of the acquisition planning process. The IRB means the team of individuals identified who have been designated to assist the Fee-Determining Official in making incentive fee determinations.

(1) The evaluation plan shall include the following:

(i) Organizational structure of the requiring activity;

(ii) Roles and responsibilities of the evaluation team/IRB;

(iii) Roles and responsibilities of the Fee-Determining Official (FDO);

(iv) Roles and responsibilities of the contracting officer;

(v) Evaluation periods and respective incentive or fee allocations for each period;

(vi) Evaluation criteria and performance criteria;

(vii) Categories of performance being evaluated (e.g., technical, quality, cost, delivery) and their associated weights, if any;

(viii) Evaluation process; and,

(ix) Procedures for amending or changing the plan.

(2) The FDO shall be at least one level above the contracting officer and shall approve the evaluation plan, prior to the issuance of the solicitation.

(3) The desired or required results are realized when incentives are structured properly. The incentives should not result in tradeoffs of quality or other benefits (i.e., expedited delivery at the expense of quality).

(4) The evaluation plan, prior to the payment of an incentive, requires the contractor to provide a minimum level of satisfactory performance on the contract.
(5) The contractor shall provide self-evaluations at the end of each evaluation period, and other pertinent information as requested by the contracting officer in accordance with the evaluation plan.

(o) At the end of each performance evaluation period, the contracting officer’s representative or the performance monitor shall prepare a written assessment of the contractor’s performance (see Sample Evaluation Checklist: Attachment #A).

(1) The IRB shall review the assessments and submit a written evaluation and recommendation to the FDO. The FDO shall make the final decision on whether an incentive is to be authorized and, if so, the amount.

(2) The contracting office shall ensure the decision is documented in the contract file.

(3) VA’s written assessment shall support the evaluation of the contractor’s performance.

Subpart M816.5—Indefinite-Delivery Contracts

M816.504-70 Indefinite-quantity contracts.

The VA Indefinite-Delivery Indefinite-Quantity (IDIQ) Guide is provided as Appendix M816A for use by the acquisition workforce.

M816.505 Ordering.

(b) Orders under multiple-award contracts.

(2) Exceptions to the fair opportunity process.

(ii)(B)-70 Orders exceeding the simplified acquisition threshold. In accordance with FAR 16.505(b)(2)(ii), a written justification shall be required to waive or limit competition for task orders under MATOCs. Approval of the justification shall be obtained prior to release of a request for proposal. The written justification must address the content requirements at FAR 16.505(b)(2)(ii)(B). Approval thresholds for the required written justification are as follows:

(a) For a proposed task orders exceeding the simplified acquisition threshold, but not exceeding $700,000, the justification shall be approved by a contracting officer one level above the contracting officer. The contracting officer shall ensure that the justification is accurate and complete to the best of their knowledge and belief.

(b) For a proposed task order over $700,000 but not exceeding $13,500,000, the justification shall be approved by the advocate for competition of the activity placing the order.
(c) For a proposed task order over $13,500,000 but not exceeding $68,000,000, the DSPE shall approve the justification.

(d) For a proposed task order over $68,000,000, the justification shall be approved by the SPE.

(b)(8) **Task-order and delivery-order ombudsman.** The task-order contract and delivery-order ombudsman for VA is the Associate Deputy Assistant Secretary (ADAS) for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

M816.505-70 Maximum order amounts.

(a) For IDIQ construction contracts, the maximum order amount is $50,000,000.

(b) For IDIQ facilities maintenance, repair, and construction contracts, the maximum order amount is $500,000.

**Subpart M816.7—Agreements**

M816.703 **Basic ordering agreements.**

(a) Individual orders issued under a basic ordering agreement (BOA) are closed out individually, following the completion of the contractor’s performance (see FAR 4.804-1).

(b) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities in the Federal Procurement Data System. The ordering activity shall receive this data in sufficient time to prepare its report for the action. The report shall be prepared within three (3) working days from the issuance of the order.

M816.770 **Consignment agreements.**

(a) Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is a delivery method for a specified period of time in which the contractor provides items for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Unused items are returned to the contractor at the end of the effective period of the agreement without reimbursement or other expenses to the Government.
(b) Delivery of items by consignment may be considered in those instances where the requirement for an item will be immediate and it is not possible to predetermine which of several types or models are required. Having each type or model on hand (through a consignment) will assure instant availability to the user. See Attachment B for examples of non-biological implantable devices appropriate for usage of consignment agreements.

(c) A consignment agreement will only be used when it is determined to be in the best interest of the Government by the HCA and the determination shall be made a part of the official contract file.

(d) The contracting officer shall obtain technical and legal review on items with an anticipated expenditure of $250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(e) The contracting officer or the contracting officer’s representative shall establish and maintain an accountability file showing all transactions and the total value of property on consignment at all times. As a minimum, the accountability file must reflect the following:

1. Date of receipt of property.
2. Ownership of property.
3. Description of property.
4. Quantity.
5. Value of property.
6. Agreement number.
7. Record of orders placed for property used during agreement period and receiving official.
8. Acknowledgment of receipt of unused property returned to owner.

(f) Contracting officers should consider the following when soliciting offers:

1. Specifying the effective period of time for the consignment and that the Government reserves the right to cancel the consignment at any time.
2. Requiring offerors to provide pricing on items that will be sold to the Government.
3. Specifying that the Government assumes no liability for assigned
consignment items, but that the Government will be obligated only to the extent of authorized orders against the agreement.

(4) Food and Drug Administration (FDA) and other Regulatory Agencies Recall. At the time of the award of the agreement, the contractor(s) will not have any outstanding actions from the FDA or other regulatory agencies or unresolved FDA warning letters on the manufacturing processes or quality control issues involving the products covered by this solicitation. The Government will require proof from the contractor that any FDA issues have been resolved. A letter to the contractor from the regulatory agency will meet this requirement.

(5) Technology refresh:

(A) All implants, instruments, and accessories offered shall be state-of-the-art technology. "State-of-the-art" is defined as the most recently designed components which are announced for marketing purposes, available, maintained and supported in accordance with requirements specified in the solicitation. Components and products with a manufacturer's planned obsolescence within the first year of the agreement are not acceptable.

(B) If upgrades of instruments, implants, or supplies become available after establishment of an agreement, the contractor will offer them as substitutes to the initial items.

(C) The contractor will provide to the contracting officer the following information:

(i) List of specific initial items which shall be updated.

(ii) Product literature for the new items and a detailed description of the differences between the initial items and the new items, and a specific analysis of the comparative advantages/disadvantages of the items involved.

(D) Agreement will be modified to acknowledge any updated items and pricing.

(g) Inventory. Contractor agrees to furnish and maintain an inventory of the consignment items in accordance with the terms and conditions of the agreement. Items, as well as all required instruments and all related supplies, will be placed at the Government’s location at no expense to the Government. Minimum inventory levels proposed by the contractor will be reviewed and accepted by the Government prior to placement. The Government will make the final determination on inventory levels. A complete listing of models and/or part numbers will be provided to the Government with a copy to the contracting officer, or designee upon delivery of the initial inventory.
(h) Initial inventory. Initial consignment inventory shall be placed in the medical center within (insert number) calendar days after award of the agreement. Consignment inventory will be placed in a location designated by the Government. The Government will provide adequate space/shelving for implants, instruments, and supplies.

(i) Instrumentation Sets:

(1) To accommodate surgery scheduling, additional sets (loaner sets) may be needed and will be made available upon mutual agreement between the Government and contractor. Contractors shall be contacted at a minimum (insert number of days) prior to the anticipated date of surgery for elective cases and (insert number of hours) for urgent cases. Contractors are responsible for retrieving the loaner sets after surgery where they will be cleaned but not sterilized. Instrumentation includes any accessories necessary to accomplish the implant (does not include non-implantable consumable items which are available from multiple suppliers).

(2) If an instrument from the set becomes lost or damaged due to Government negligence, the Government will then be responsible for the damaged or lost instrument.

(j) Liability. The Government assumes no liability for any items assigned to the Government on a consignment basis until such time as a requirement for the item exists and an order is placed against the contract/consignment agreement. An exception to contractor liability is loss or damage of any consignment item due to Government negligence.

(k) Replacement items. After each procedure, the Government will provide a list of items used and the contractor will provide replacements within (insert number of hours). Replacements will be shipped FOB Destination within consignee’s premises. Contractor shall provide maintenance (examine sets to see if they need to be refurbish and/or sharpened) and redundancy so that there is a fail safe mechanism (back-up set) if primary set is faulty. The contractor shall re-sterilize and/or replace, at no charge, any items that are handled but not implanted.

(l) Inventory Maintenance. Contractor’s personnel will periodically (no less than once per quarter) conduct a physical inventory of the consignment inventory with a copy of the inventory furnished to the contracting officer. Contractor will maintain, remove, or replace inventory as necessary.

(m) Expiring Inventory. Inventory having less than 90 days sterility/expiration date shall be removed and replaced by the contractor in coordination with the Government. A list of all products will be provided to the contracting officer. These services will be completed at no cost to the Government.
(n) *Defective Items.* Defective and worn out instruments will be replaced by the contractor at no charge to the Government, unless the Government has misused or lost the implant or instrument.
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(a) The VA shall administer the incentive provisions of the contract in accordance with the FAR/VAAR.

(b) In addition, the VA shall specify the criteria (developed and tailored) used in the evaluation plan to evaluate the contractor's performance for each acquisition.

(c) This sample evaluation checklist provides some examples of areas that can assist in evaluating the contractor’s performance.

(d) The overall objective is to document the evaluation of the contractor’s performance against the evaluation plan.

1. The contractor shall satisfy a clear condition for payment, to protect the VA from paying incentives not earned by the contractor.

2. Ongoing communication with contractor personnel about performance is of considerable importance in the incentive environment, but should not lead to the direction of efforts in a manner that compromises the contractor's responsibilities under the contract.

(e) Appraisal, assessment, and measurement are characteristics of the evaluation process. A further explanation of these questions may be necessary depending on the nature and the complexity of the requirement.

1. Did the contractor perform this task with an unusual degree of competence?

2. Were the tasks or specific objectives clearly defined in declarative and unambiguous terms (i.e., reasonably certain and determinable)?

3. What was the impact of the early or late completion of this effort?

4. What was the current workload in relation to the contractor's performance of this particular event?

5. Was the contractor resourceful in their attempts to complete the task through in-house resources and capabilities?

6. Did factors beyond the contractor's control hinder or limit performance?

7. What significant relationships exist between this effort and others?

8. Did the contractor receive an adequate description of the facilities and a clear understanding of their relationship to the event?
9. How important was the time frame involved?

10. Did the contractor perform the effort on its own initiative or as a result of a specific technical direction?

11. Has the program office clearly distinguished the contractor's performance in terms of ingenuity, creativity, and motivation?

12. Has the program office clearly expressed the impact of the event?

13. Has the program office clearly assessed the contractor's performance in regard to all tasks and specific objectives?

14. Did the contractor have a minimum of a satisfactory performance rating on all of the other tasks under the contract, not directly related to the incentive fee?
Examples of non-biological implantable devices include, but are not limited to:

1. Anchors Pins;
2. Any instrument set (including loaners) that may contain any potential non-biological implantable device(s);
3. Bolts;
4. Breast implants;
5. Cranial implants;
6. Heart valves;
7. Internal pacemakers or Implantable Cardiac Defibrillator (ICD);
8. Joints (such as knees, hips, and shoulders);
9. Marlex mesh;
10. Mersilene mesh;
11. Nails;
12. Nuts;
13. Penile implants;
14. Plates;
15. Rods;
16. Screws;
17. Stents;
18. Vascular grafts; and
19. Washers
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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M817—SPECIAL CONTRACTING METHODS

Sec.

Subpart M817.1—Multiyear Contracting

M817.105-1 Uses.
M817.107 Options.
M817.108 Congressional Notifications.

Subpart M817.2—Options

M817.202 Use of options.
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Subpart M817.5—Interagency Acquisitions

M817.502 Procedures.
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Subpart M817.1—Multiyear Contracting

M817.105-1 Uses.

(a) Each head of the contracting activity (HCA) determination to use multiyear contracting shall be in accordance with the criteria stated in FAR 17.105-1(a).

M817.107 Options.

When including options as a part of a multiyear contract, options shall not be used to extend the performance of the original requirement beyond 5 years.

M817.108 Congressional notification.

(a) The Senior Procurement Executive (SPE) is delegated the authority to provide written notification of the proposed contract and of the proposed cancellation ceiling for that contract in accordance with FAR 17.108(a). Upon the HCA’s approval of the determination, the SPE will sign the congressional notification letter, and provide it to the appropriate House and Senate committees through the VA Office of Congressional and Legislative Affairs.

Subpart M817.2—Options

M817.202 Use of options.

(a) The requiring activity’s request to include option provisions should be part of the initial requirements documentation and appropriately covered during acquisition planning and documented via a Determination and Findings (D&F). The final determination on whether to include options rests with the contracting officer or source selection authority, if one is appointed other than the contracting officer.

M817.204 Contracts.

(e) The contracting officer must obtain the approval of the HCA or designee before awarding a contract that includes options exceeding the 5-year limitation specified in FAR 17.204(e).

Subpart M817.4—Leader Company Contracting

M817.402 Limitations.

(a)(4) The HCA shall designate a contracting officer to enter into a leader company contract. The contracting officer shall submit the proposed contract for legal review. The contract file will include a determination and finding signed by the contracting officer, and contain the concurrence of the HCA.
Subpart M817.5—Interagency Acquisitions

M817.502 Procedures.

When acquisition planning determines that it is appropriate to fulfill a requirement through an assisted acquisition, and VA is the requesting agency, the process outlined below shall be followed to prepare the interagency acquisition package for approval:

(a) The VA program official, after conducting initial market research and developing an acquisition plan, contacts their assigned contracting officer to discuss the proposed interagency acquisition.

(b) Personnel shall take into consideration the timeliness of market research performed in support of an interagency acquisition for the same or similar items/services procured for the same program office or requiring activity. Timely market research would be defined as market research conducted within the past six months of the date the interagency acquisition action was submitted to the HCAs.

(c) Upon completion of the acquisition plan and the D&F, if required, the program official in conjunction with the concurrence of the contracting officer, shall prepare the interagency acquisition package. The package shall consist of:

(1) Description of supplies, Statement of Work, Performance Work Statement, or Statement of Objectives.

(2) The acquisition plan that has been reviewed and approved.

(3) The D&F (when using the authority of the Economy Act).

(4) An independent government cost estimate as a method of determining the reasonableness of proposals.

(5) A certified funding document.

(6) Interagency Agreement Forms FS 7600A and FS 7600B, or VA Form 2269 if the requirement is between two VA appropriations. The following applies:

(i) Copies of all documentation listed in c. (1) through (6) above will be retained in the Electronic Contract Management System (eCMS) contract file as well as the Contracting Officer Representative files.

(ii) All interagency agreements must specify a dollar ceiling in block 9 of the 7600A. Any individual task or delivery order executed against the master agreement must also specify a dollar ceiling. Before the ceiling can be exceeded (after initial award of the interagency agreement), the program official must prepare a modification/amendment to the interagency acquisition and re-route the document through the approval process.
outlined above. Any vague or indefinite amount would violate the Anti-Deficiency Act, 31 U.S.C. 1341.

(iii) Requests for interagency acquisitions must be submitted through the eCMS planning module or Virtual Office of Acquisition, as appropriate.

M817.502-1 General.

(a) The HCA shall approve all assisted acquisitions where the VA component is the servicing agency.

(b) When VA intends to establish a multiple-agency or governmentwide acquisition contract, a business case analysis must be completed in accordance with FAR 17.502-1(b). Business cases shall be approved by an authority no lower than VA’s SPE.

(c) HCAs shall:

1) Develop and implement guidance ensuring only qualified contracting individuals with appropriate training are assigned to all existing and future interagency acquisitions.

2) Establish procedures to review the Economy Act D&Fs, and, where applicable, acquisition plans on a semi-annual basis.

3) Establish procedures to review the contract files for interagency acquisitions on a semi-annual basis to ensure compliance with the FAR, the VAAR and the VAAM.

M817.503 Ordering procedures.

(a) All Economy Act interagency acquisitions with $250,000 or more in life cycle costs, and all interagency acquisitions with $750,000 or more in life cycle costs, require Office of General Counsel (OGC) review and concurrence. OGC reviews may be sought for any draft interagency acquisitions but must be obtained when the package is ready for final review and approval.

(b) All interagency acquisitions and interagency agreements for the procurement of IT or information technology related acquisitions, shall be supported by an Acquisition Plan that has been approved by the VA Chief Information Officer or an authorized designee.

M817.504 Reporting requirements.

A monthly report of interagency transactions will be prepared by Enterprise Acquisition Systems Service and distributed to the Office of Finance for the purpose of
reconciling the procurement and financial accounting data systems. The report will be generated on the 2nd Wednesday of the month and copies of the report will also be provided to the SPE, Deputy SPE, each of the HCAs, and the Office of Acquisitions and Logistics Risk Management and Compliance Service.
M822.001 Definitions.

Subpart M822.1—Basic Labor Policies

Sec.
M822.101 Labor relations.
M822.101-1 General.
M822.101-3 Reporting labor disputes.
M822.101-4 Removal of items from contractors' facilities affected by work. Stoppages.
M822.101-70 Impact of labor disputes on Veterans Affairs programs and requirements.
M822.102 Federal and State labor requirements.
M822.102-1 Policy.
M822.103 Overtime.
M822.103-4 Approvals.

Subpart M822.3—Contract Work Hours and Safety Standards Act

M822.302 Liquidated damages and overtime pay.
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Subpart M822.4—Labor Standards for Contracts Involving Construction

M822.402 Applicability.
M822.402-70 Veterans Affairs facilities support contracts.
M822.403 Statutory and regulatory requirements.
M822.403-4 Department of Labor regulations.
M822.403-70 Construction Wage Rate Requirements statute application.
M822.404 Construction Wage Rate Requirements statute wage determinations.
Subpart M822.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

M822.604 Exemptions.
M822.604-2 Regulatory exemptions.

Subpart M822.8—Equal Employment Opportunity

M822.803 Responsibilities.
M822.804 Affirmative action programs.
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M822.1203-3 Waiver.

Subpart M822.13—Equal Opportunity for Veterans

M822.1305 Waivers.
M822.1308 Complaint procedures.

Subpart M822.14—Employment of Workers with Disabilities

M822.1403 Waivers.
M822.1406 Complaint procedures.

Appendix M822-A – Applicability of Construction Wage Rate Requirements Statute (Davis-Bacon Act) in Construction Contracts with Options

Appendix M822-B – Investigations – Procedures, Guidance and Information
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Subchapter D—Socioeconomic Programs

Part M822—Application of Labor Laws to Government Acquisitions

M822.001 Definitions.

“Labor advisor,” as used in this part, means the VA Labor Advisor appointed by the Office of Acquisition and Logistics (OAL). A list of agency labor advisors is posted on Department of Labor internet site http://www.wdol.gov/ala.aspx.

Subpart M822.1—Basic Labor Policies

M822.101 Labor relations.

M822.101-1 General.

(a) Contracting officers shall obtain approval from the Labor Advisor before –

(1) Contacting a national office of a labor organization, a Government agency headquarters, or any other organization (e.g., local unions) on labor relations matters or disputes; or

(2) Making recommendations for injunctive action relating to potential or actual work stoppages or plant seizure.

(e) Any action containing the FAR clause 52.222-1, Notice to the Government of Labor Disputes, requires contractors to report actual or potential labor disputes to the contracting officer.

M822.101-3 Reporting Labor Disputes.

Contracting officers shall notify the VA Labor Advisor, of any potential or actual labor disputes that may interfere with performing any contracts or orders under its cognizance in accordance with head of the contracting activity (HCA) procedures.

M822.101-4 Removal of items from contractors’ facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer shall, before initiating any action and before removing any items from the facility—

(1) Contact the Labor Advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations.
(2) Upon the recommendation of the Labor Advisor, provide a written request for removal of the material to the respective contract administration office;

(3) With the assistance of the VA Labor Advisor, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means; and

(4) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a)(1) through (a)(3) of this subsection, refer the matter to the Labor Advisor. If the Labor Advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the HCA. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the HCA, on a non-delegable basis, may order removal of the items from the facility.

M822.101-70 Impact of labor disputes on Veteran Affairs programs and requirements.

(a) If the dispute involves a project (including construction), service or product required to meet schedules for urgently needed VA programs or requirements, the applicable HCA shall consider the degree of impact of the labor dispute, and shall obtain and develop data reflecting the impact of the labor dispute. Upon determining the impact, the HCA shall submit a report of findings and recommendations to the VA Labor Advisor. See http://www.wdol.gov/ala.aspx

(b) The report to the Labor Advisor shall be in narrative form and shall include -

(1) The location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources for the supply or service which are able to deliver within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The HCA shall submit impact reports to the Chief Acquisition Officer (CAO) through the VA Labor Advisor and Deputy Senior Procurement Executive (DSPE) when-

(1) Specifically requested; or

(2) The HCA considers the impact to warrant the attention of the CAO.
(d) The VA Labor Advisor shall recommend a course of action to the CAO and require the HCA to expand the impact report submitted under paragraph (c) of this subsection by addressing the following, as appropriate -

(1) Description of VA program, project, or service. Identify item, project, or service that will be or is being affected by the work stoppage. Describe its normal use and current functions; and

(2) Requirements and assets. Identify the following requirements and assets in appropriate detail in terms commonly used by the VA.

   (i) For programs, include requirements for each VA requiring official. Where applicable, state in detail program schedule, inventory objectives, assets against these objectives, and critical shortages.

   (ii) For any projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on VA capability to accomplish its daily mission.

   (iii) For services, describe how a loss or interruption affects the ability to support VA operations.

(3) Possible measures to minimize strike impact. Describe—

   (i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

   (ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

   (iii) The feasibility of transferring assets from one VA facility to another VA facility to relieve deficits in some areas of urgency.

(4) Conclusion.

   (i) Describe the impact on VA operations of a 15-30, 31-60, and a 61-90 day work stoppage.

   (ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time shall be stated in terms of calendar days.
M822.102  Federal and State labor requirements.

M822.102-1  Policy.

(a) Contracting officers shall direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the DOL.

(b) Contracting officers shall not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the Labor Advisor. OSHA must approve requests for any variance or alternate means of compliance with OSHA requirements.

M822.103  Overtime.

M822.103-4  Approvals.

The HCA is the designated approving official. The HCA may delegate overtime approval authority to a level no lower than the contracting officer.

Subpart M822.3—Contract Work Hours and Safety Standards Act

M822.302  Liquidated damages and overtime pay.

(c) If the HCA finds that the administratively determined liquidated damages due under paragraph (a) of FAR 22.302 are incorrect, or that the contractor or subcontractor inadvertently violated the Contract Work Hours and Safety Standards Act despite the exercise of due care, the HCA may --

(1) Reduce the amount of liquidated damages assessed for liquidated damages of $500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of $500 or less; or

(3) For liquidated damages above $500, prepare and submit a request to the Labor Advisor to endorse and forward to the SPE/DSPE a recommendation that the Secretary of Labor reduce or waive liquidated damages over $500.

M822.302-70  Contract work hours and safety standards violations and liquidated damages.

(a) The contracting officer, upon receipt of notification of Contract Work Hours and Safety Standards violations shall -
(1) Provide instructions to the supporting finance officer whether to withhold funds from contract payments pending final administrative determination;

(2) Notify the Finance Office of any final decision to assess liquidated damages; and

(3) Advise the contractor in writing of any decision to withhold funds, including the reasons for the withholding, and the amount held to satisfy the contractor's liability for unpaid wages and liquidated damages.

(b) If the contractor protests either that the sum determined is incorrect or that the violations were inadvertent, notwithstanding the exercise of due care, the contracting officer shall advise the contractor of its right to appeal this action to the Secretary of Veterans Affairs under the provision of section 104(c) of the Contract Work Hours and Safety Standards Act. The contracting officer shall also advise the contractor that the appeal shall be taken under section 104(c) and not under the Disputes clause of the contract. If the protest is made orally to the contracting officer, the contracting officer shall advise the contractor to submit its appeal, in writing, within 60 days after receipt of the contracting officer’s decision. Should the protest be in writing, however, the contracting officer shall treat the letter of protest as an appeal. In each instance, the contracting officer shall forward the written protest or appeal through the HCA to the VA Labor Advisor. Coordinate all written communications with the contractor, including the notification of dispute resolution procedures under the DOL's regulations at 29 CFR Parts 4 through 8, with the support of legal counsel.

(c) The assessment shall become the final administrative determination of contractor liability for liquidated damages when -

(1) The contractor fails to appeal to the contracting agency within 60 days after the date of the withholding of funds;

(2) The SPE, following the contractor's appeals, issues a final order which affirms, reduces or waives the assessment of liquidated damages of $500 or less; or

(3) The Secretary of Labor takes final action on the Secretary of Veterans Affairs' recommendation to waive or adjust liquidated damages in excess of $500. Also see M822.406-9, Withholding from or suspension of contract payments.

(d) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed to the Government as liquidated damages to the servicing finance officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor (see 29 CFR 5.8).
Subpart M822.4—Labor Standards for Contracts Involving Construction

M822.402 Applicability.

M822.402-70 Veterans Affairs facilities support contracts.

(a) See Department of Labor User’s Guide, http://www.wdol.gov/usrguide/index.aspx, to obtain appropriate Service Contract Labor Standards (historical title: Service Contract Act) and/or the Construction Wage Requirements statute (historical title: Davis-Bacon Act (DBA)) wage determinations for each official solicitation, re-solicitation, option, extension or any other contract action requiring the most recent and applicable wage determination. Apply both the Service Contract Labor Standards and the Construction Wage Requirements statute (DBA) to VA support contracts if -

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and;

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000 (for DBA applicability) or $2,500 (for Service Contract Act applicability)

(b) Service Contract Labor Standards coverage under the contract. VA hospital, facility and, medical center support requirements, such as facility operations and installation services (i.e., custodial, snow removal, grounds maintenance etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) Construction Wage Rate statute (DBA) coverage under the contract. Contracts for construction, alteration, renovation, painting, and repair requirements (e.g., roof shingling, building structural repair, paving repairs, etc.) are subject to the Construction Wage Rate statute requirements (DBA). Apply the applicable clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either Construction Wage Rate statute applicable (DBA painting/repairs) or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the Service Contract Labor Standards. In those instances where a contract service call or order requires construction trade skills (e.g., carpenter, plumber, painter, etc.), but it is unclear whether the work required is Service Contract Labor Standards maintenance or DBA painting/repairs, apply the following rules:
(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the Service Contract Labor Standards.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the Construction Wage Rate.

M822.403 Statutory and regulatory requirements.

M822.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor (DOL) regulations to the VA Labor Advisor.

M822.403-70 Construction Wage Rate Requirements statute application.

(a) In accordance with FAR 22.403-1, the Construction Wage Rate Requirements statute (Davis-Bacon Act (DBA)) applies to contracts in excess of $2,000 to which the United States or the District of Columbia (D.C.) is a party for construction, alteration, and/or repair, including painting and decorating, of public building or public works of the United States or the District of Columbia. The Construction Wage Rate Requirements statute requires that all laborers and mechanics employed on the site of the project be paid not less than the wages and fringe benefits determined by the DOL to be prevailing in the area.

(b) Four elements are required for DBA to apply:

(1) Public building or public work. Public buildings include the building structure and all utility systems and other improvements to the structure. This includes plumbing, electrical, and lighting systems, fire alarm and suppression systems, heating, ventilation and air conditioning systems, elevators, material handling systems, built-in cranes, hoists, attached antennas, etc. Public works are structures and improvements other than buildings, such as roads, runways, bike-paths, storage tanks, wells, exterior
portions of utility systems, exterior pools, playgrounds, playing courts, antennas not attached to a building, etc., “Public” does not require access by the general public.

(2) **Party to contract.** The courts have ruled that the Construction Wage Rate Requirements (DBA) also applies to many “lease construction” contracts under which construction is funded by third parties such as banks. See DOL memorandum number 176 dated 22 Jun 94, [http://www.wdol.gov/aam/AAM176.pdf](http://www.wdol.gov/aam/AAM176.pdf). The government merely contracts to lease the completed facilities at a specified rate for a specified number of years. The statute would also apply to so-called “no cost” improvements to public buildings performed by utility companies (such as installation of energy-efficient lighting-the cost of which is deducted from future savings).

(3) **United States or D.C. The Construction Wage Rate Requirements statute (DBA) applies only within the 50 states and D.C.** It does not apply to Federal construction contracts in Guam, Puerto Rico, Virgin Islands or other territories, although other laws may invoke DBA on certain civilian projects there.

(4) **Construction, Alteration, or Repair and Painting and Decorating.** Construction, alteration, repair, painting, or decorating does not include regularly-recurring, routine maintenance of public buildings and works. Alteration involves making a relatively permanent improvement to a building or work. Repair goes beyond maintenance, and is usually performed to return something to operational use rather than to keep it operating.

Example: overhaul of an elevator is much more extensive than simple maintenance, and shall be considered repair. Renovation also goes beyond maintenance. Example: replacing several cracked windowpanes is a maintenance task but replacing all windowpanes in a building or part of a building shall be considered renovation subject to the statute.

(c) All painting other than minor touch-up following routine maintenance is subject to the Construction Wage Rate Requirements statute (DBA). The statute also covers decorating, which may involve wallpapering, paneling/wainscoting, installation of decorative ironwork, wood trim, etc.

**M822.404 Construction Wage Rate Requirements statute wage determinations.**

The Office of Construction and Facilities Management provides information on the Construction Wage Rate Requirements statute (historical title: Davis Bacon Act or DBA) Wage Rate Determination at the following link: [Http://www.cfm.va.gov/contract/WageRate.asp.](http://www.cfm.va.gov/contract/WageRate.asp) This website contains information and guidance pertaining to contract work to be performed that is not covered under any classification listed in the wage determination.
M822.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.

For guidance pertaining to the applicability of DBA for construction contracts with options see Appendix A.

M822.404-70 Annual reporting of planned VA construction projects.

(a) Not later than April 1 of each year each HCA shall submit, through the VA Labor Advisor, a consolidated list of approved construction projects (to include construction maintenance and repair projects) subject to the Construction Wage Rate Requirements statute (DBA) for which contracts are proposed to be awarded by subordinate contracting offices in the ensuing fiscal year to: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, DC 20210. The DOL uses this information to determine where general wage determination surveys will be conducted.

(b) During the fiscal year, the HCA shall notify the VA Labor Advisor of any significant changes in their proposed construction programs as reported to DOL. The report format is contained in DOL All Agency Memo 144, December 27, 1985, (see 29 CFR 1.4).

(1) Indicate by individual project of $500,000 or more -

   (i) The anticipated type of construction;

   (ii) The estimated dollar value; and

   (iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report control number is 1671-DOL-AN.

M822.405 [Reserved]

M822.406 Administration and enforcement.

M822.406-1 Policy.

(a) General. The contracting officer shall inform the prime contractor of the necessity to include labor standard clauses in all subcontracts with a preconstruction letter or at the preconstruction conference (see 29 CFR 5.5(a)(6)). The contracting officer shall document the discussion of the requirement to include labor standard clauses in all subcontracts at a preconstruction conference. Contracting officers shall
file the documentation of the discussion in the respective Electronic Contract Management System (eCMS) contract file briefcase.

(b) Preconstruction letters and conferences

(1) Promptly after award of the contract, the contracting officer shall hold a preconstruction conference with the prime contractor or provide a letter to the prime contractor that accomplishes the following, as appropriate:

(i) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations:

(A) Davis–Bacon Act. (Now known as the Construction Wage Rate Requirements statute.)

(B) Contract Work Hours and Safety Standards statute. (Historical title: Contract Work Hours and Safety Standards Act.)

(C) Copeland (Anti-Kickback) Act. (Now referred to simply by the title “Kickbacks.”)

(D) Parts 3 and 5 of the Secretary of Labor’s Regulations (Part 3 and Part 5, Subtitle A, Title 29, CFR).

(E) Executive Order 11246 (Equal Employment Opportunity).

(ii) Call attention to the labor standards requirements in the contract which relate to-

(A) Employment of foremen, laborers, mechanics, and others;

(B) Wages and fringe benefits payments, payrolls, and statements;

(C) Differentiation between subcontractors and suppliers;

(D) Additional classifications;

(E) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(F) Penalties and sanctions for violations of the labor standards provisions;

(G) The applicable provisions of FAR 22.403; and

(iii) Ensure that the contractor sends a copy of the preconstruction letter or minutes of the preconstruction meeting to each subcontractor.
(2) Before construction begins, the contracting officer shall advise the prime contractor and any subcontractor designated by the prime of the labor standards obligations under the contract when:

(i) The prime contractor has not performed previous Government contracts;

(ii) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(iii) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment.

(3) The Payroll Form WH-347, and, Instruction for Completing Payroll Form WH-347, developed by the Department of Labor, may be used as the basis of the discussion.

M822.406-6 Payrolls and statements.

(c) Examination.

(1) The contracting officer or the authorized Contracting Officer’s Representative (COR) shall make the examination required by FAR 22.406-6(c) as appropriate. The contracting officer shall assure each pay period is accounted for and that each weekly payroll contains the information required. The COR shall, with each payroll submission, certify the rates of pay comply with the contract wage determination and the labor standards provisions. In the event payrolls are not received within the time specified by the COR, the COR shall inform the contracting officer. The contracting officer shall take immediate action to secure the payroll submission. The contracting officer shall include the COR requirement to perform the examination required by FAR 22.406-6(c) in the COR appointment letter.

(d) Preservation. The contracting officer shall file and maintain completed and signed copies of payrolls and statements of compliance (Form WH 347) submitted pursuant to FAR 22.406-6 in the respective eCMS briefcase, (see 29 CFR 5.6(a) (3)).

M822.406-8 Investigations.

(a) The contracting officer shall authorize investigations necessary to ensure contract compliance. The contracting officer, COR, or other government official shall conduct the investigation.

(b) Before beginning an investigation, the investigator shall inform the contractor that a labor standards investigation is being performed, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at Appendix B.
(c) Contractor notification. Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards (CWHSS) statute. The notification shall inform the contractor that -

(1) They have 60 days after receipt of the notice to appeal the assessment of liquidated damages;

(2) The appeal shall demonstrate either that the alleged violations did not occur, but occurred inadvertently notwithstanding the exercise of due care, or that the assessment was computed improperly; and

(3) If an appeal is received, the contracting officer shall process the appeal in accordance with department and/or agency regulations.

(d) Contracting officer’s report. Forward a detailed enforcement report or summary report to the Labor Advisor in accordance with HCA procedures. Include in the report, as a minimum, the information specified at Appendix B paragraph (8). Use Standard Forms (SF) 1445 Labor Standards Interview, and SF 1446, Labor Standards Investigation Summary Sheet, to document regular investigations and employee interviews to assure contractors’ compliance with labor standards in construction contracts.

M822.406-9 Withholding from or suspension of contract payments.

(a) Withholding from contract payments. The contracting officer shall contact the Labor Advisor for assistance when payments due to a contractor are not available to satisfy that contractor’s liability for Wage Rate Requirements (IAW 48 CFR 222.406-9) statute wage underpayments or liquidated damages.

(c) Disposition of contract payments withheld or suspended.

(3) Limitation on forwarding or returning funds. When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) Liquidated damages. See M822.302-70.
M822.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) The contracting officer shall provide any findings along with the contractor’s statement to the Labor Advisor for submission to the Administrator, Wage and Hour Division in accordance with HCA procedures.


Prior to terminating any contract or subcontract for violation of the labor standards clauses, the contracting officer shall, in consultation with the Labor Advisor, prepare a detailed report that documents the facts and circumstances surrounding the violation. The contracting officer shall obtain a legal review of the proposed termination from the supporting Office of General Counsel (OGC). The report and results of the legal review will be forwarded to the SPE/DSPE for further review. If the contract is to be terminated, the SPE/DSPE shall submit the report as required by FAR 22.406-11 to DOL’s Administrator, Wage and Hour Division, and the Comptroller General.

M822.406-13 Semiannual enforcement reports.

(a) The HCA shall forward semiannual reports to the VA Labor Advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the DOL. The Labor Advisor will consolidate these reports into an agency report, which will be submitted to the DOL not later than April 30 and October 31 of each year. A negative report is required. These reports shall contain the following information, as applicable, for construction work subject to the DBA and the CWHSS statute:

(1) Period covered.

(2) Number of prime contracts awarded.

(3) Total dollar amount of prime contracts awarded.

(4) Number of contractors/subcontractors against whom complaints were received.

(5) Number of investigations conducted.

(6) Number of contractors/subcontractors found in violation.

(7) Amount of wage restitution found due under—

   (i) Construction Wage Rate Requirements statute; and
(ii) CWHSS statute.

(8) Number of employees due wage restitution under—
   (i) Construction Wage Rate Requirements statute; and
   (ii) CWHSS statute.

(9) Amount of liquidated damages assessed under the CWHSS statute—
   (i) Total amount; and
   (ii) Number of contracts involved.

(10) Number of employees and amount paid/withheld under—
   (i) Construction Wage Rate Requirements statute;
   (ii) CWHSS statute; and
   (iii) Copeland Act.

(11) Preconstruction activities—
   (i) Number of compliance checks performed; and
   (ii) Preconstruction letters sent.

M822.406-70 Reports of violations.

(a) Reports of violations--regular investigations. Each non willful violation involving the Contract Work Hours and Safety Standards Act, which has been corrected, but which requires the assessment of liquidated damages, will be reported to the SPE. Based on the facts of the case, the contracting officer shall submit a recommendation with the report as to whether the contractor should be relieved of this liability.

(b) Reports of violations--special investigations.

   (1) Reports of investigations conducted by the DOL are submitted by their Washington office to the SPE. After review by the SPE (and except as provided in paragraph (c)(2) of this section), the report will be furnished to the contracting officer concerned for necessary action together with such advice and guidance as may be indicated.

   (2) If the investigation report indicates possible violations of a criminal nature, the SPE will forward the report to the VA Inspector General for investigation and referral to
the Department of Justice. In the event the case is submitted to the Department of Justice, the contracting officer and the Department of Labor will be so advised by the SPE. 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.

(3) The contracting officer shall review the report of investigation and complete the actions indicated therein. The contracting officer will submit a report of the actions taken to SPE, with recommendations regarding the assessment of liquidated damages and the imposition of sanctions. The SPE will, after reviewing this report, submit a report to the DOL of the actions taken, together with recommendations for any suggested actions to be taken by that agency.

(c) Reports control exemption. The reports referred to in paragraphs (a) and (b) of this section are exempt from reports control.

Subpart M822.5—Use of Project Labor Agreements for Federal Construction Projects

M822.503 Policy.

(a) VA planners shall consider whether a Project Labor Agreements (PLA) requirement shall be included for construction contract actions associated with large-scale projects and document the results based on an objective analysis. VA’s contracting officers shall refer to and follow FAR Subpart 22.5, Use of Project Labor Agreements when necessary. If a PLA requirement is included in the solicitation, the contracting officer shall ensure any additional requirements under FAR 22.504(b)(6) or any prescribed terms and conditions under FAR 22.504(c) were coordinated with supporting OGC and are explained in the file memorandum.

(b) In cooperation with the program office or project manager, the contracting officer shall ensure that the acquisition plan properly identifies each construction contract action associated with a large-scale project if the estimated value is $25 million or greater. The contracting officer will prepare a file memorandum reflecting rationale for the PLA decision (either for or against) and have it approved by the HCA or the HCA’s designee. The appropriate PLA provision and clause shall be included in the solicitation/contract when a PLA will be required.

(c) Factors to Consider and Documentation. In addition to the factors at FAR 22.503, the following may be used to assist VA planners in determining whether requiring a PLA is in the best interest of the government and the specific terms and conditions the offeror/contractor shall include in the PLA itself:

(1) Solicit and document PLA recommendations from industry professionals in the local community where the project will be located.
(2) Request the Architect/Engineer provide information to the project manager, during each design phase, regarding current local market/economic conditions and labor shortages, as well as information on whether PLAs were used successfully in the project area.

(3) Issue a Sources Sought announcement seeking PLA input from industry or state/local governmental entities. A pre-solicitation conference also may be used to obtain similar information.

(4) Using a market survey, determine if other state or Federal construction projects will be competing for the same labor pool.

(5) Determine how a PLA could impact project budget and schedule either positively or negatively.

(6) Use any other reliable public information available to assist in the determination whether use of a PLA is in the best interest of the government.

Subpart M822.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

M822.604 Exemptions.

M822.604-2 Regulatory exemptions.

(b) Contracting officers shall submit any requests for regulatory exemptions to the VA Labor Advisor in accordance with HCA procedures.

Subpart M822.8—Equal Employment Opportunity

M822.803 Responsibilities.

(c) The VA Labor Advisor is responsible for ensuring that the requirements of FAR 22.8 are carried out within the agency, and for cooperating with and assisting the Office of Federal Contractor Compliance Programs (OFCCP) in fulfilling its responsibilities.

(d) In the event the applicability of Executive Order 11246 and implementing regulations are questioned, the contracting officer through the HCA shall forward the matter through the VA Labor Advisor to the Deputy Assistant Secretary for resolution.

M822.804 Affirmative Action Programs.

M822.804-2 Construction.

(b) The list of geographical areas subject to affirmative action requirements can be obtained from the OFCCP, U.S. Department of Labor. Contracting officers
contemplating a construction project in excess of $10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office. See https://www.dol.gov/ofccp/taguides/TAC_FedContractors_JRF_QA_508c.pdf.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award of a construction contract subject to affirmative action requirements in accordance with HCA procedures. A list of OFCCP regional office is provided at http://www.dol.gov/ofccp/contacts/regkeyp.htm.

M822.805 Procedures.

(a) The contracting officer shall include the value of the basic contract plus priced options to determine whether the contract meets the threshold in FAR 22.805(a). A contract modification exercising a priced option is not a contract award under FAR 22.805(a)(1)(ii) and does not require a preaward clearance. Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. The content of preaward clearance request is prescribed by FAR 22.805(a)(5). See FAR 22.805(a)(6) and (7) for timelines delineated for the submission of requests for preaward clearance to OFCCP and receipt of OFCCP’s response.

(b) The EEO poster required by FAR 22.805(b) can be found at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

M822.807 Exemptions.

(c) When seeking an exemption from the requirements of Executive Order 11246, submit the request with a justification through the HCA to the VA Labor Advisor, who will forward the request to the SPE. If the request is submitted under FAR 22.807(a) (1), the SPE shall act on the request. If the exemption is granted, the SPE shall notify the Director, OFCCP, of such action within 30 days. If the request is submitted under FAR 22.807(a) (2) or (b) (5), the SPE will forward it to the Director, OFCCP, for action.

Subpart M822.12—Nondisplacement of Qualified Workers Under Service Contracts

M822.1203-3 Waiver.

(b)(3) The VA Labor Advisor shall notify the DOL of its waiver decision and provide the DOL with a copy of its written analysis no later than five business days after the solicitation issuance date (see 29 CFR 9.4(d)(2)). Failure to comply with this notification requirement shall render the waiver decision inoperative, and the contracting officer shall include the clause at 52.222-17 in the solicitation. The waiver decision and related written analysis shall be sent to the U.S. Department of Labor, Wage and Hour Division or emailed to Displaced@dol.gov.
Subpart M822.13—Equal Opportunity for Veterans

M822.1305 Waivers.

(c) The contracting officer shall submit a request to the Labor Advisor, in accordance with HCA procedures, when seeking a waiver against the terms at FAR clause 52.222-35, Equal Opportunity for Veterans. If the request is justified; the Labor Advisor will endorse and forward the request, through the DSPE, for action by the Secretary of Veterans Affairs. The DSPE shall notify the Deputy Assistant Secretary of Labor of the waiver in writing within 30 days.

M822.1308 Complaint procedures.

(a) The contracting officer shall –

(1) Forward any complaints received about the administration of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act) to the Veterans' Employment and Training Service of the Department of Labor and OFCCP regional office in accordance with HCA procedures; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or that the complaint was received.

Subpart M822.14—Employment of Workers with Disabilities

M822.1403 Waivers.

(c) The contracting officer shall submit a request for waivers under FAR 22.1403(a) and FAR 22.1403(b), to the Labor Advisor. If the request is justified, the Labor Advisor will endorse and forward the request, through the DSPE, for action by the Secretary of Veterans Affairs, and for submission for DOL concurrence.

M822.1406 Complaint procedures.

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Rehabilitation Act of 1973 (the Act) to the—

Deputy Assistant Secretary for Federal Contract Compliance
200 Constitution Avenue, NW
Washington, DC 20210,

or to any OFCCP regional or area office. The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record. The contracting officer shall notify the complainant of such referral. The contractor in
question shall not be advised in any manner or for any reason of the complainant’s name, the nature of the complaint, or that the complaint was received.
Applicability of Construction Wage Rate Requirements Statute (Davis-Bacon Act) in Construction Contracts with Options

This information is provided as a guide only; it does not replace or change the appropriate contract clauses or any labor regulations and it is not intended to be an authoritative source of the Department of Labor enforcement position.

In accordance with FAR 22.404-12 contracting officers are required to incorporate current Construction Wage Rate Requirements (the statute) (historical title: Davis-Bacon Act (DBA)) Wage Determinations at option years (and extension periods).

Requirement: Effective for contracts solicited after 21 Dec 2001, the current DBA wage determination shall be incorporated into DBA-covered contracts when options or extensions are exercised to extend the term of the contract. Existing contracts and “traditional” construction contracts with no option to extend term are not affected. Incorporation of current DBA wage determinations at options was previously only required for job order contracts (e.g., This FAR change implements DOL AAM No. 157, dated 9 Dec 92, as clarified and published in the Federal Register on 20 Nov 98.)

Required Clause: The clause prescriptions at FAR 22.407(e), (f), and (g) require the contracting officer to select and include one of three possible clauses in solicitations and resultant contracts. Contract price adjustment—if any—depends upon the specific clause incorporated, but all three clauses inform bidders/offerors that a new wage determination will be incorporated for each option year. The three possible clauses are as follows:

1. FAR 22.407(e) and FAR clause 52.222-30 (Davis-Bacon Act Price Adjustment (None or Separately Specified Method)), may be used for either (1) fixed-price contracts containing DBA provisions and one or more options to extend the contract term, if the contracting officer determines this pricing method to be the most appropriate of the methods identified at FAR 22.404-12(c) or (2) all cost-reimbursement contracts subject to DBA and containing one or more options to extend the contract term. Under this clause, no adjustment is made on fixed-price contracts or one is made only if there is a separate price adjustment provision in the contract. If there will be no adjustment, the contracting officer may allow bidders/offerors to price options at differently from the base year. FAR 22.404-12(b)(1) suggests that the “no adjustment” avenue is more appropriate for fixed-price construction-only contracts (with options to extend the term) that are not expected to exceed a total of three years.
OR

2. **FAR 22.407(f)** and FAR clause **52.222-31** (Davis-Bacon Act Price Adjustment (Percentage Method)), may be used for fixed-price contracts containing DBA provisions and one or more options to extend contract term, if the contracting officer determines this pricing method to be the most appropriate of the methods identified at **FAR 22.404-12(c)**. Under this clause, any adjustment is based on a published economic indicator designated in the solicitation and resultant contract. This provision requires the contracting officer to designate in this clause in the solicitation the percentage of the contract (or contract unit price) believed to represent labor costs (50%, unless the contracting officer has determined another percentage is more appropriate). The economic indicator is applied only to this “labor portion” of the contract. Example: option year price X 50% (labor portion) X 3.2% (from published economic indicator) = adjustment amount.

OR

3. **FAR 22.407(g)** and FAR clause **52.222-32** (Davis-Bacon Act Price Adjustment (Actual Method)), may be used for fixed-price contracts containing DBA provisions and one or more options to extend the contract term, if the contracting officer determines this pricing method to be the most appropriate identified at **FAR 22.404-12(c)**. We recommend this clause only when it is clearly in the best interest of the government because the level of work and/or the wage rate escalation cannot be satisfactorily projected.

NOTE: The above information is in summary form, and does not discuss all the provisions of the requirement. Contracting officers are strongly advised to review **FAR 22.404-12** and **FAR 22.407** to determine exactly how this requirement will affect a particular solicitation and contract.

The wage determination for Indefinite-Delivery/Indefinite Quantity (IDIQ) contracts for non-recurring maintenance and construction repair and maintenance requirements should be handled in accordance with **FAR 22.404-6(b) or (c)** depending on whether sealed bidding or negotiated procurement are used. For option and extension periods, **FAR 22.404-12** and **FAR 22.407** procedures will apply. IDIQ, construction contracts with provisions to extend the term of the contract, require incorporation of the most current DBA wage determination with the exercise of each option (or extension). The current year wage determination is then applied to each work order issued during that contract year. Once incorporated in a work order, the wage determination is good for the life of the individual work order—even after the start of a new contract year containing a more current wage determination. The contracting officer will determine price adjustment according to **FAR 22.407(e), (f), or (g)**. In either case it’s imperative that the
methodology be specific and stated in the solicitation by incorporation of one of the three clauses, so the ground rules will be clear to both the bidders and the Government.

**Incorporating Wage Determinations in Contracts with Options:**

General Wage Determinations: The most current wage determination/modification available at option exercise shall be incorporated for contracts containing one or more published General Wage Determinations (GWD) (most DBA-covered contracts). The GWDs can be obtained at [WDOL.gov](http://WDOL.gov). The wage determination incorporated shall be from the same schedule as wage determination incorporated in the contract. If the contract was subject to only the “Building” schedule for a specific area, only the most current modification of the Building wage determination or superseding Building wage determination for the same area shall be incorporated. Always confirm that the wage determination still covers both the correct geographic area and the proper schedule (Building, Residential, Heavy, Highway, etc.).

**APPLICABLE LAWS AND REGULATIONS**

Wage Rate Requirements (Construction) (Historical Title: [Davis-Bacon Act]) - Requires payment of prevailing wages to laborers and mechanics employed on federal and federally assisted construction projects. [Reorganization Plan of 1950] - A plan that authorizes the Secretary of Labor to prescribe appropriate standards, regulations, and procedures and to make such investigations concerning compliance with, and enforcement of, labor standards as necessary.


**29 CFR Part 3** - Regulations regarding contractors and subcontractors on public building or public work financed in whole or in part by loans or grants from the United States.

**29 CFR Part 5** - Regulations regarding labor standards provisions applicable to contracts covering federally financed and assisted construction.

**29 CFR Part 6** - Regulations describing the Rules of Practice for administrative proceedings enforcing labor standards in federal and federally assisted construction contracts and federal service contracts.

**29 CFR Part 7** - Regulations describing practice before the Administrative Review Board with regard to federal and federally assisted construction contracts.
RELATED TOPICS AND LINKS

DOL's Office of Federal Contract Compliance Programs (OFCCP) - OFCCP administers the laws prohibiting discrimination in hiring or employment decisions on the basis of race, color, gender, religion, or national origin by government contractors and subcontractors and federally assisted construction contracts and subcontracts. See also Compliance Assistance by Topic - Equal Employment Opportunity.

Contract Work Hours and Safety Standards Act - This Act requires contractors and subcontractors with covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.

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APPENDIX M822-B

Investigations – Procedures, Guidance and Information (M822.406-8)

This information is provided as a guide only; it does not replace or change the appropriate contract clauses or any labor regulations and it is not intended to be an authoritative source of the Department of Labor enforcement position.

(a) Under Reorganization Plan No. 14 of 1950, contracting agencies are tasked with the primary responsibility for the conduct of labor standards compliance activities for construction contracts subject to the Davis-Bacon Act. When such compliance assurance activities disclose potential violations that are substantial in amount (wage underpayments in excess of $1,000) or when requested by the DOL, the contracting officer or a designee should take the following steps to ensure compliance with the investigative requirements of the DOL:

(1) **Beginning of the investigation.** The investigator shall—

(i) Inform the contractor of the investigation in advance;

(ii) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(iii) Outline the general scope of the investigation, including the examination of pertinent records and the interview of employees;

(iv) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor; and

(v) When requested, provide a letter from the contracting officer verifying the investigator’s authority.

(2) **Conduct of the investigation.** Labor standards investigations are comprised of the following essential components:

(i) **Review of the contract.**

(ii) Verify that all required labor standards and clauses and wage determinations are included in the contract.

(iii) Review the following items in the contract file, if applicable:

(A) List of subcontractors.
(B) Payroll statements for the contractor and subcontractors.

(C) Approvals of additional classifications.

(D) Data regarding apprentices and trainees as required by FAR 22.406-4.

(E) Daily inspector's report or other inspection reports.

(F) Employee interview statements.

(G) Standard Form (SF) 1413, Statement and Acknowledgement.

(3) Interview of the complainant. If the investigation is based upon the receipt of a complaint, the investigator should interview the complainant unless this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(4) Interview of employees and former employees.

   (i) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, and hours worked, and the type of work performed.

   (ii) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

   (iii) Former employees may be interviewed elsewhere.

   (iv) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

   (v) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

   (vi) Obtain information by mail when personal interviews are impractical.

   (vii) Use SF 1445, Labor Standards Interview, for employee interviews.
(viii) Ask employees to sign their statements and to initial any changes.

(ix) Provide an evaluation of each employee's credibility.

(5) Interview of foremen. Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(6) Interview of the contractor.

(i) Interview the contractor whenever the investigation indicates the possibility of a violation.

(ii) Inform the contractor that—

(A) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(B) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(iii) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(7) Review of contractor and subcontractor records.

(i) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met (see FAR 22.406-2(a)(3)).

(ii) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following:
(A) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period.

(B) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract.

(C) Computation of daily and weekly hours.

(D) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c).

(E) Gross weekly wages.

(F) Deductions.

(G) Computation of net weekly wages paid to each employee.

(H) Ratio of helpers, apprentices, and trainees to laborers and mechanics.

(I) Apprenticeship and trainee registration and ratios.

(J) Computation of fringe benefits payments.

(iii) Transcribe the contractor’s records whenever they contain information at variance with payrolls or other submitted documents as follows:

(A) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(B) Follow the form used by the contractor.

(C) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(D) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(8) Submission of the report of investigation. The investigator shall submit a report of the investigation in accordance with M822.406-8(d). Each report shall include at least—

(i) The basis for the investigation, including the name of the complainant;
(ii) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(iii) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(iv) Description of the contract and subcontract work involved;

(v) Summary of the findings with respect to each of the items listed under paragraph (a)(2) in this Appendix; and

(vi) Concluding statement concerning—

(A) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Wage Rate Requirements statute, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards statute;

(B) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(C) The amount of funds withheld from the contractor;

(D) Other violations found; and

(E) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable:

(1) Complaint letter.

(2) Contract wage determination.

(3) Preconstruction letter and memorandum of preconstruction conference.

(4) Payrolls and statements indicating violations.

(5) Transcripts of pertinent records of the contractor and approvals of fringe benefit payments.

(6) Employee interview statements.

(7) Foreman interview statements.

(8) Statements of others interviewed, including Government personnel.
(9) Detailed computations showing kickbacks, underpayments, and liquidated damages.

(10) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages.

(11) Receipts and cancelled checks.

(b) The contracting officer's report shall include the following:

(1) **SF 1446**, Labor Standards Investigation Summary Sheet.

(2) Contracting officer's findings.

(3) Statement as to the disposition of any contractor rebuttal to the findings.

(4) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages.

(5) Statement as to the disposition of funds available.

(6) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution).

(7) When applicable, the following exhibits:

(i) Investigator's report.

(ii) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings.

(iii) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection.

(iv) Evidence of the contractor's payment of restitution or liquidated damages (copies of receipts, cancelled checks, or supplemental payrolls).

(v) Letter from the contractor requesting relief from the liquidated damage provisions of the Contract Work Hours and Safety Standards statute.
SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
(Added 9/30/2019)

Subpart 823.1—Sustainable Acquisition Policy

Sec. 823.103-70 Policy.
823.103-71 Solicitation provision.

Subpart 823.3—Hazardous Material Identification and Material Safety Data

823.300 Scope of subpart.
823.303-70 Contract clause.

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.
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823.103-70 Policy.

(a) For new contracts and orders above the micro-purchase threshold, contracting officers may insert a solicitation provision to include an evaluation factor for an offeror's Sustainable Acquisition Plan.

(b) When a solicitation includes the provision at 852.223-70, Instruction to Offerors—Sustainable Acquisition Plan, offerors shall include a Sustainable Acquisition Plan in their technical proposal addressing the sustainable products and services for delivery under any resulting contract.

823.103-71 Solicitation provision.

The contracting officer shall insert the provision at 852.823-70, Instruction to Offerors—Sustainable Acquisition Plan, in solicitations above the micro-purchase threshold.

Subpart 823.3—Hazardous Material Identification and Material Safety Data

823.300 Scope of subpart.

This subpart provides a contract clause for use in administering safety and health requirements.

823.303-70 Contract clause.

The contracting officers shall insert clause 852.823-71, Safety and Health, in solicitations and contracts that involve hazardous materials or hazardous operations for the following types of requirements:

(1) Research, development, or test projects.

(2) Transportation of hazardous materials.

(3) Construction.
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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart M824.1—Protection of Individual Privacy

Sec.
M824.102 General.
M824.103-70 Procedures for the Privacy Act.

Subpart M824.2—Freedom of Information Act

M824.102 General.

(a) Every two years the Office of Acquisition and Logistics will review a random sample of contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act binding on the contractor and his or her employees, pursuant to OMB Circular A-130, Appendix 1.

M824.103-70 Procedures for the Privacy Act.

(a) Contracting officers shall contact their Privacy Officer or Privacy Service designee for assistance and expertise on all matters related to privacy. Privacy Officer or Privacy Service designee information can be found at the Office of Privacy and Records Management:

   Email: privacyservice@va.gov
   Address: 810 Vermont Avenue (005R1A)
            Washington, DC 20420

(b) The contracting officer shall review all purchase request documentation to determine whether the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) are applicable. The program manager will be responsible for performing a Privacy Threshold Analysis and Privacy Impact Assessment in accordance with VA Handbook 6508.1, Procedures for Privacy Threshold Analysis and Privacy Impact Assessment, to review and assess the privacy implications of information contained in VA information technology (IT) systems, programs or projects.

(c) Applicability to System of Records. The Privacy Act requirements apply when a contract or order requires the contractor to design, develop, or operate any Privacy Act system of records on individuals to accomplish an agency function. When applicable, the contracting officer shall include the clauses at FAR 52.224-1, Privacy Act Notification, and 52.224-2, Privacy Act, as prescribed by FAR 24.104, in solicitations, contracts, or orders. In addition, the contracting officer shall include the clauses and other pertinent information specified in this subpart, in any modification which results in the Privacy Act requirements becoming applicable to a contract or order.

(d) Performance Work Statement or Statement of Work. The contracting officer shall ensure that the statement of work (SOW) or performance work statement (PWS)
specifies the system(s) of records or proposed system(s) of records to which the Privacy Act and the implementing regulations are applicable or may be applicable.

(1) The contracting officer shall ensure that the contract SOW or PWS specifies the disposition to be made of the system(s) of records upon completion of contract performance in accordance with the Privacy Act and the Federal Records Act.

(2) The contract SOW or PWS may require the contractor to destroy the records, remove personal identifiers, or turn the records over to the contracting officer. If there is a legitimate need for a contractor to keep copies of the records after completion of a contract, the contractor must take measures, as approved by the contracting officer, to keep the records confidential and protect the individuals’ privacy.

(e) Requirement for a Federal Register “System Notice.” For any acquisition subject to Privacy Act requirements, the requiring activity prior to award shall prepare and have published in the Federal Register a "system notice," describing the Department of Veterans Affairs intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system. The requiring activity shall attach a copy of the system notice to the acquisition plan or other purchase request documentation. If a system notice is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the requiring activity for inclusion in the contract file. If a notice for the system of records has not been published in the Federal Register, the contracting officer may proceed with the acquisition but shall not award the contract until the system notice is published and the contracting officer verifies its publication.

Subpart M824.2—Freedom of Information Act

M824.203 Policy.

Contracting Officers or Contract Specialists shall provide unredacted responsive records to the cognizant Freedom of Information Act (FOIA) Officer per 38 C.F.R. § 1.555(a). As per page 7, paragraph e(4) of the FOIA Standard Operating Procedure, Contracting Officers or Contract Specialists must provide such within five (5) business days of the FOIA request.
Subchapter E—General Contracting Requirements
Part M828—Bonds and Insurance

Subpart M828.1—Bonds and Other Financial Protections

Sec.
M828.100 Scope of subpart.
M828.101 Bid guarantees.
M828.101-70 Safekeeping and return of bid guarantee.
M828.106 Administration.
M828.106-6 Furnishing information.
M828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.
M828.106-73 Performance and payment bonds for multiple award contracts.

Subpart M828.2—Sureties and Other Security for Bonds

M828.203 Acceptability of individual sureties.
M828.203-7 Exclusion of individual sureties.
M828.204 Alternatives in lieu of corporate or individual sureties.
M828.204-2 Certified or cashier’s checks, bank drafts, money orders, or currency.
M828.270 General procedures and processes related to handling bonds.

Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

M828.7004 Approval for indemnification.

Attachment:

M828 Attachment A: Contract Bonds Checklist
Subpart M828.1—Bonds and Other Financial Protections

M828.100 Scope of subpart.

This subpart prescribes guidance and procedures for the safekeeping of negotiable securities, furnishing information to contractors, and assisting Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Concerns in obtaining bonding.

M828.101 Bid guarantees.

M828.101-70 Safekeeping and return of bid guarantee.

(a) The contracting officer shall retain certified checks or other negotiable securities provided as bid security acceptable bids in a safe or a similarly secured location. After the contract and contract bonds have been signed and approved, the contracting officer shall return the certified checks or other negotiable securities to all bidders either:

   (1) In person to the bidder who provides a proper receipt; or

   (2) By any method that shall provide evidence that the bidder received the security.

(b) If any of the acceptable bidders request the return of a corporate or individual surety bid bond, the contracting officer shall not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

M828.106 Administration.

M828.106-6 Furnishing information.

The contracting officer for the applicable contract shall furnish a certified copy of the payment bonds to the requestor and determine the preparation costs that the requestor must pay in accordance with FAR 28.106-6(d)(3).

M828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

Contracting officers will encourage VA prime contractors to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.
M828.106-73 Performance and payment bonds for multiple award contracts.

Performance and payment bonds for multiple award contracts are only required at the time of issuance of a task/delivery order and shall not be required for the maximum value of the contract. The bonds will be based on the amount of the task order and any subsequent modifications.

**Subpart M828.2—Sureties and Other Security for Bonds**

**M828.202 Acceptability of corporate sureties.**

The contracting officer shall ensure that corporate sureties offered for a bond in connection with the procurement of supplies or services (including construction) appear on the list of approved corporate sureties contained in the Treasury Department Circular 570, and that the amount of bond is not in excess of the underwriting limits stated in that list. The current list of Treasury authorized companies is available through the Internet at Department of the Treasury's Listing of Companies Holding Certificates of Authority. The contracting officer will further ensure that the surety remains on the Treasury Department circular approved list through the active life of the contract by reviewing all circular supplements. Interim changes are published in the Federal Register and on the internet as they occur. When an active surety is terminated and removed from the list, the contracting officer shall ensure that new bonding is secured by the contractor for the uncompleted work under the contract at no cost to the Government. For further procedures on handling bonds refer to M828.270 below.

**M828.203 Acceptability of individual sureties.**

**M828.203-7 Exclusion of individual sureties.**

(a) The authority to make determinations to exclude individuals from acting as surety on bonds referenced in FAR 28.203-7(a) is delegated to the DSPE.

(b) The authority to authorize acceptance of bonds of individual sureties whose names appear in the System for Award Management Exclusions pursuant to FAR 28.203-7(d) is delegated to the DSPE.

**M828.204 Alternatives in lieu of corporate or individual sureties.**

**M828.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.**

The contracting officer receiving a certified or cashier’s check, bank draft, post office money order or currency in lieu of corporate or individual sureties will deposit them in accordance with FAR 28.204-1(a) or (b).

**M828.270 General procedures and processes related to handling bonds.**
(a) Bonds protect the Government, the prime contractor’s employees, and the subcontractors and suppliers who provide goods or services to the prime contractor.

(1) The bid bond, Standard Form (SF) 24 (on solicitations with cost estimates exceeding $150,000), ensures that if awarded a contract, the bidder will furnish acceptable payment and performance bonds.

(2) The performance bond (SF25) protects the Government from loss in the event the contractor fails to complete the contract or fails to pay its taxes.

(3) The payment bond (SF 25A) protects the prime contractor’s employees in the event the contractor fails to pay salaries and the subcontractors and suppliers in the event the contractor fails to pay its bills.

(4) Subcontractors, suppliers, and the prime contractor’s employees are precluded from filing liens against Federal Government property.

(b) The contracting officer is responsible for ensuring the bond documents they accept and approve are valid.

(c) To be acceptable, the corporate surety bond must contain the name of a corporation in the “SURETY(IES)” block of the form and the named corporation must be listed in the Department of the Treasury’s Listing of Approved Sureties (Department of Treasury’s Listing of Approved Sureties).

(1) If the named surety (other than an individual named person) is not listed in Department of the Treasury Circular 570, the bond must be rejected in accordance with FAR 28.202. This does not apply if an individual is shown on the bond as the surety in the “SURETY(IES)” block.

(2) If that block contains anything other than the name of a Department of the Treasury Circular 570-listed corporate surety or an individual person’s name, the bond should be rejected.

(d) The contracting officer must check and verify that the “PENAL SUM OF BOND” amount shown on the bond complies with the requirements of FAR 28.101-2(b) or 28.102-2.

(e) If the amount on a bid bond is not sufficient, the contracting officer must comply with and follow the guidance at FAR 28.101-4.

(f) The correct “INVITATION NO.” or “CONTRACT NO.” must be shown in the applicable block on the bond.

(1) An incorrect invitation number on a bid bond make the bid bond invalid and the bid should be rejected.

(2) The contracting officer must reject payment or performance bonds that have an incorrect contract number and return the bonds to the contractor for correction.
(g) The name “PRINCIPAL” on the bond (the bidder or contractor) must be the same name as the named bidder or contractor as shown on the SF 1442 and the type of organization shown on the bond must match the type of organization shown in the solicitation offer representations and certifications or on-line at System for Award Management (SAM) Registration and Representations and Certifications database SAM database.

(h) The bond forms may not be modified from the standard form formats (see FAR 28.106-1), except as provided in FAR 28.204(a). Only standard, non-modified United States Government forms should be accepted. Bond forms from other organizations such as the American Institute of Architects (AIA) may not be accepted.

(1) In addition, an addendum adding a rider on terrorism coverage is acceptable.

(2) Any addendum or rider other than a terrorism rider must be approved by the Office of the General Counsel (OGC).

(i) Bonds must be original documents, contain original signatures, must not contain any “white-out” corrections, and must be signed by both an authorized representative of the Principal (the bidder or contractor) and by an individual who has been delegated by the surety corporation with the power and authority to sign bonds on behalf of the corporation (the “attorney-in-fact”).

(1) Under certain circumstances the lack of signature of the Principal may be waived as a minor informality and the defect may be corrected after receipt of the bond, but the lack of signature of the attorney-in-fact on a corporate surety bond may not be waived and renders the bond unacceptable.

(2) A corporate seal of the surety is not sufficient evidence that the attorney-in-fact is authorized to sign the bond. They must also be accompanied by a valid power of attorney from the surety corporation granting the attorney-in-fact authority to sign.

(j) The “STATE OF INC.” and the “LIABILITY LIMIT” blocks should be filled in, but failure of the bond to reflect the surety’s liability limit in the “LIABILITY LIMIT” block may be waived as a minor informality.

(1) A liability limit stated in the “LIABILITY LIMIT” block that is less than the amount required by FAR 28.101-2(b) or 28.102-2 shall render the bond unacceptable. If there is a liability limit set against the bond the contracting officer shall consult with OGC.

(2) The liability limit figure shown for the surety corporation in Department of the Treasury Circular 570 represents the dollar value of each surety bond that the corporation is authorized to issue. If the liability limit is listed as $3,000,000 the corporation is authorized to issue bonds valued at up to $3,000,000 for each bond.

(3) Bonds that exceed the liability limit value should be rejected unless the penal sum (face amount) of bonds which surety companies may provide is protected by co-
insurance, reinsurance, or other methods in accordance with Department of the Treasury Circular 31 CFR Section 223.10, Section 223.11.

(k) Surety corporations can only sell bonds in States in which they are licensed to do so.

(1) The power of attorney usually states where the attorney-in-fact is located or the address of the attorney-in-fact may be shown in the “NAME AND ADDRESS” block under “CORPORATE SURETY(IES)” at the bottom of the bond.

(2) The contracting officer must match the State where the attorney-in-fact is located with the list of States shown for that particular surety corporation in Department of the Treasury Circular 570.

(3) The States listed in the Circular are the States in which the surety is licensed to sell bonds, but the list may not be current.

(4) If the attorney-in-fact is located in a State that is not shown in Department of the Treasury Circular 570 for that surety, the contracting officer should verify with the surety corporation (not with the attorney-in-fact) whether or not the surety corporation is licensed to issue surety bonds in the State in which the attorney-in-fact is located.

(5) The contracting officer can also verify with the State insurance commissioner (information of such offices can usually be located on the Web or can be found at the end of Department of Treasury Circular 570 that the surety corporation is licensed to conduct surety business in that State.

(6) If the surety corporation is not licensed to issue bonds in the State in which the attorney-in-fact is located, the bonds shall be rejected.

(7) The location of the construction project or the location of the bidder/contractor has no impact on the States in which the surety is licensed; the State relates only to the location of the attorney-in-fact who signed the bonds (see Notes (c) and (f) in Circular 570).

(l) A valid power of attorney is critical to the validity of the corporate surety bond.

(1) The contracting officer must read the power of attorney and assess its validity. A sample power of attorney can be found on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) website. (Sample power of attorney)

(2) If the document says that it is only valid if it contains a corporate water mark or a particular color, it must contain the required water mark or color. If it doesn't the bond should be rejected.

(3) The power of attorney must state that the person who signed the bond is authorized to do so and the name on the power of attorney must match the name shown on the bond.
(4) If the power of attorney places any limits on the dollar value or on the type of bonds that the named attorney-in-fact can execute, the bonds signed by that attorney-in-fact must be within those limits.

(5) If the power of attorney contains any signatures that are printed copies of signature rather than original signature, the document must contain a statement that printed copies of signatures is authorized.

(6) The document must contain a statement with a current date attesting that the power of attorney is still valid. If there is any question as to the validity of the power of attorney, the validity of the bond should be verified with the corporate surety office.

(7) The contracting officer should consult with OGC for guidance in determining the adequacy and acceptability of powers of attorney.

(8) If a contracting officer has any concerns as to the validly of a corporate surety they should go to the Department of Treasury Circular 570 website.

(9) For corporate sureties that do not participate in the Bond Authenticity program, the contracting officer should contact such sureties via the telephone number listed in Circular 570 to verify that the bonds are valid.

(m) For contracts between $35,000 and $150,000, a bid bond is not required, but the contractor must be required to provide payment protection after contract award. The solicitation should authorize the contractor to select from at least two of the types of payment protection authorized by FAR 28.102-1(b).

(1) More than two options can be provided to the bidder/contractors, but it is preferable that bidder/contractors be given at least the option of providing either a payment bond or an irrevocable letter of credit (ILC).

(2) If the contractor elects to furnish anything other than corporate surety bonds, i.e., individual surety bonds or alternative payment protections the contracting officer shall consult with the OGC to determine the validity and acceptability of the payment protection provided.

(n) For contracts estimated to exceed $150,000 a bidder or contractor may furnish alternatives in lieu of corporate or individual surety in support of a bond (see FAR 28.204).

(1) In such instances, the bidder or contractor must submit a completed bond form or forms containing a statement pledging security as provided in FAR 28.204-1 through 28.204-3 in lieu of execution of the bond form by a corporate or individual surety.

(2) If an ILC is offered as an alternative security, the contracting officer must consult with the OGC for guidance in determining the adequacy and acceptability of the ILC. Note that the ILC must comply with the requirements of FAR 28.204-4.
(o) If a bidder or contractor provides an individual surety bond, the contracting officer shall obtain the opinion of the OGC as to the adequacy of the documents pledging the assets of the individual surety prior to accepting the bond (FAR 28.203(f)).

(1) The types of assets of an individual surety that are acceptable are listed in FAR 28.203-2(a) and 28.203-2(b) and the contracting officer must ensure that only those types of assets are accepted.

(p) While it is not mandatory for the contacting officer to require bid bonds from a bidder on 8(a) sole source negotiated construction contracts valued in excess of $150,000, it is recommended that bid bonds be required in such circumstances.

(1) This requirement will help avoid the necessity of terminating an awarded contract if the contractor is unable to provide acceptable payment and performance bonds.

(2) If the bidder can provide an acceptable bid bond and is subsequently awarded a contract, VA will include the cost of the bid bond in the negotiated award price.

(3) A contractor should not be placed into a situation where the contractor is subject to termination of the contract for failure to provide acceptable payment and performance bonds if that situation could have been avoided through the rejection of a defective bid bond.

Subpart M828.70—Indemnification of Contractors for Medical Research or Development Contracts

M828.7004 Approval for indemnification.

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) The contracting officer must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. (38 U.S.C. 7317)
**M828 Attachment A**

**CONTRACT BONDS CHECKLIST FOR CONTRACT NO.__________**

**INSTRUCTIONS:** Review each item with the corresponding part of the Bid, Performance, and/or Payment Bond Forms and indicate either by an “X or “N/A” (not applicable) for each item. File this completed checklist in the appropriate part of the contract file.

<table>
<thead>
<tr>
<th>ITEM (BID BOND SF 24, PERFORMANCE BOND SF 25, AND PAYMENT BOND SF 25-A)</th>
<th>SF 24</th>
<th>SF 25</th>
<th>SF 25A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bond must be executed on correct form (SF 24, SF 25, SF 25-A)</td>
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<tr>
<td>2. Date of execution entered on Bid Bond (SF 24)</td>
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<tr>
<td>A. Ensure that date of the Bid Bond is not later than the bid opening date</td>
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<tr>
<td>B. Payment Bond (SF 25-A) date not prior to date of contract (SF 1442)</td>
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<td>C. Performance Bond (SF 25) date not prior to date of contract (SF 1442)</td>
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<td>3. Name of Principal must be entered</td>
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<td>4. Name of Principal identical with name on bid and/or contract must be entered</td>
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<td>5. Type of organization space completed -</td>
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<tr>
<td>If corporation, state of incorporation must be entered</td>
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<td>6. Corporate Surety</td>
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<tr>
<td>A. Name of Surety and state in which Surety was incorporated</td>
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<td>B. Surety listed on current list of the Treasury’s Listing of approved Sureties for the appropriate amount (FAR 28.202) (NOTE: Attach applicable excerpt from Treasury Listing.)</td>
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<tr>
<td>7. Individual Sureties (2 or more)</td>
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<tr>
<td>A. Contractor complies with FAR 28.203</td>
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<tr>
<td>B. SF 28, Affidavit Of Individual Surety, Executed correctly by each Surety and submitted with Bonds</td>
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<td>8. Penal Sum or Percentage must be entered</td>
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<tr>
<td>Bid Bond SF 24 (20%), Performance Bond SF 25 (100%), Payment Bond SF 25A (100%)</td>
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<td>9. Penal Sum is in sufficient amount (Penal Sum is in agreement with Bond Requirements)</td>
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<tr>
<td>SF 24, SF 25, SF 25A</td>
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<tr>
<td>10. Date of bid or contract must be entered</td>
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<tr>
<td>11. Bid or contract number must be entered (Entry identical with number on bid or contract)</td>
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<td>12. Principal Signatures</td>
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<td>A. Individual - Signature identical to that on bid</td>
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<td>B. Partnership - Signature of Partner</td>
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<td>C. Corporation - Signature of Officer or Agent</td>
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<tr>
<td>D. Corporation - The Seal or Scroll, stamped must be impressed or affixed</td>
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<tr>
<td>13. Name and address of Surety must be entered in the appropriate space</td>
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</table>
14. Surety Signatures

A. Bond signed for Surety Company

B. Power of Attorney by Surety giving authority to the Agent to execute Bonds in the appropriate dollar amount

15. Impression (Raised) or Stamped of the Corporate Seal of the Surety must be affixed to the Bond

16. Rate and amount of the Premium entered (*Entry NOT required on Payment Bond - SF 25-A*)

17. Erasures, corrections, or other material alterations, if any, must be initialed by each person signing the Bond


Acceptability of bond verified.

_______________________________________   _____________________
Contracting Officer                     Date
SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M829—TAXES

Subpart M829.1—General

Subpart M829.2—Federal Excise Taxes

M829.201 General.

M829.203 Other Federal tax exemptions.

M829.203-70 Tax exemptions for alcohol products.

Subpart M829.3—State and Local Taxes

M829.302 Application of State and local taxes to the Government.

M829.303 Application of State and local taxes to Government contractors and subcontractors.
M829.101 Resolving tax problems.

(a) In order to ensure uniformity in VA’s treatment of the tax aspects of contracting and ensure effective cooperation with other government agencies on tax matters, the VA Office of General Counsel has the responsibility within VA for handling tax related matters and issues. Therefore, the contracting officer or any other member of the requiring or contracting activity shall not engage in negotiation with any taxing authority for the purpose of determining the validity of any tax.

M829.101-70 Procedures for legal review of tax issues.

(a) When a problem exists which requires referral to legal tax counsel in accordance with FAR 29.101 and M829.101, the contracting officer shall request in writing the assistance of legal counsel by—

(1) Detailing the problem;

(2) Attaching appropriate back-up data; and

(3) Providing copies of the contract, order and modifications.

(b) VA Office of General Counsel (OGC) shall report to the contracting officer as to the necessary disposition of the tax issue.

(c) The contracting officer shall notify the contractor of the outcome of the tax issue.

(d) VA OGC is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes. Any notifications received by the contracting officer shall be promptly referred and provided to OGC.

Subpart M829.2—Federal Excise Taxes

M829.201 General.

(a) See M829.101-70 for VA procedures for legal review of tax issues.
M829.203 Other Federal tax exemptions.

M829.203-70 Tax exemptions for alcohol products.

(a) General.

(1) VA is permitted to procure spirits to be used for non-beverage purposes free of tax under Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations. Refer to the Code of Federal Regulations, Title 27 for the limitations and requirements with particular attention to:

   (i) §19.426 Withdrawal of spirits by the United States.

   (ii) §20.241 - §20.246 under Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency.

   (iii) §22.171 through §22.176 under Subpart N—Use of Tax-Free Spirits by the United States or Government Agency.

   (iv) §24.293 Wine for Government use.

   (v) §27.181-§27.185 under Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax for Use of the United States.

(b) Specially denatured spirits or spirits free of tax for nonbeverage purposes.

(1) The contracting officer may obtain application forms for tax-free purchases by accessing the TTB Web site (http://www.ttb.gov) or by mailing a request to the TTB National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, Ohio 45202. You can find all TTB forms on TTB’s website, www.ttb.gov. Click the “Forms” link under the “Information By Topic” section. The completed forms must be submitted to the TTB officer as provided in the most recent version of the form.

(2) The Executive Director and Chief Operating Officer, National Acquisition Center, and the Head of the Contracting Activity (HCA) may sign application permits on Department of the Treasury- TTB Form 5150.33, Spirits for Use of The United States. This authority may not be delegated.

(3) The accountable officer must ensure that accurate records of all receipts, usage, and destruction of tax-free distilled spirits are maintained at each medical center and must conduct a semi-annual physical inventory of the tax-free alcohol in the possession of the medical center (see 27 CFR 22.161 and 22.162).
Subpart M829.3—State and Local Taxes

M829.302 Application of State and local taxes to the Government.

(a) If a vendor refuses to sell at a price exclusive of the State and local tax, the contracting officer must use Standard Form (SF) 1094, U.S. Tax Exemption Certificate, as a basis for notifying taxing authorities for a refund of taxes paid.

(b) A contracting officer may not furnish an SF 1094 to a vendor or use SF 1094 to claim reimbursement from the taxing authority when the total amount of State and local tax on any one purchase is $15 or less.

M829.303 Application of State and local taxes to Government contractors and subcontractors.

(c) The contracting officer shall seek review and advice in accordance with M829.101-70, Procedures for legal review of tax issues.
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M832.001 Definitions.
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M832.006-1 General.
M832.006-3 Responsibilities.
M832.006-4 Procedures.
M832.009 Providing accelerated payments to small business subcontractors
M832.009-1 General

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M832.102 Description of contract financing methods.

Subpart M832.2—Commercial Item Purchase Financing
M832.201 Statutory authority
M832.202 General.
M832.202-1 Policy.
M832.202-4 Security for government financing

Subpart M832.4—Advance Payments for Non-Commercial Items
M832.402 General.
M832.409-1 Recommendation for approval.
M832.409-2 Recommendation for disapproval.

Subpart M832.5—Progress Payments Based on Costs
M832.502 Preaward matters.
M832.502-2 Contract finance office clearance.
M832.503-6 Suspension or reduction of payments
Subpart M832.6—Contract Debts

M832.607 Installment payments and deferment of collection.
M832.607-2 Deferment of Collection.

Subpart M832.7—Contract Funding

M832.703 Contract funding requirements.
M832.703-1 General.

Subpart M832.8—Assignment of Claims

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M832.805-70 Distribution/notification of assignment of claims.

Subpart M832.9—Prompt Payment

M832.904 Determining payment due dates.

Subpart M832.11—Electronic Funds Transfer

M832.1106 EFT mechanisms.

Subpart 832.70—Electronic Invoicing Requirements

M832.7001-1 Data Transmission
M832.001 Definitions.

As used in this part—

*Incremental funding* means a method of funding contracts that provides specific spending limits that are less than the total estimated cost/price of the entire contract, with the understanding that additional funds are expected to be provided at a later date. Incremental funding typically is used because funds are not available to obligate the total cost of an entire contract that will cover multiple years or other periods or increments of performance. After obligation of the initial increment at contract award, normally for the first year, funds are subsequently obligated in periodic installments as work progresses, consistent with the terms of the contract.

*Non-severable services* means services that cannot feasibly be separated into components, but will be performed as a single task to meet the needs of the agency.

*Severable services* means services that are characterized as continuing and recurring in nature, e.g., lawn maintenance, janitorial services, security services, etc., and can be separated into components that independently provide value to meet the needs of the agency.

M832.006 Reduction or suspension of contract payments upon finding of fraud.

M832.006-1 General.

(b) The Senior Procurement Executive (SPE) is authorized to make determinations that there is substantial evidence that contractors’ requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in FAR 32.006-1. This authority may not be redelegated.

M832.006-3 Responsibilities.

(a) The Remedy Coordination Official (RCO) for VA is the Deputy Senior Procurement Executive (DSPE).

(b) VA personnel shall report suspected fraud related to advance, partial, or progress payments to the contracting officer. The contracting officer will forward the report, with recommendations through the head of the contracting activity (HCA) to the RCO and VA Office of the Inspector
General (OIG). The report must include all available information supporting the suspicion, including, but not limited to:

(1) The particular VA contract involved;

(2) The identity of the person suspected of the fraud;

(3) The incident, document, invoice, or other evidence supporting the allegation of fraud;

(4) The amount of the fraudulent claim;

(5) The date(s) when the fraudulent claim was made;

(6) Copies of relevant documents that support the allegation;

(7) Whether anyone else has already reviewed the allegation; and

(8) An address and telephone number of complainant and whether the complainant wishes confidentiality.

The person that initially made the report may be required to provide additional information as requested by the CO, HCA, RCO, and the OIG.

**M832.006-4 Procedures.**

(e) The RCO shall carry out the responsibilities of the agency head in FAR 32.006-4(e) to notify the contractor of proposed action under FAR 32.006. The notice of proposed action will be sent to the last known address of the contractor, the contractor’s counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the RCO to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the RCO does not receive a reply from the contractor within 30 calendar days, the RCO will base the recommendations to the SPE on the information available. Any recommendation of the RCO under this section must address the results of this notification and the information, if any, provided by the contractor.
(g) In addition to following the procedures in FAR 32.006-4, the SPE shall provide a copy of each final determination and the supporting documentation to the contractor, the RCO, the contracting officer, and the OIG. The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

M832.009 Providing accelerated payments to small business subcontractors.

M832.009-1 General.

Agencies are encouraged to accelerate payments to prime contractors with small business subcontractors.

Subpart M832.1—Non-Commercial Item Purchase Financing

M832.102 Description of contract financing methods.

(e)(2) The head of the contracting activity (HCA) shall establish procedures for making progress payments based on a percentage or stage of completion. The procedures shall ensure that payment is not made unless the contractor provides sufficient information about work completed and that the work meets the quality standards of the contract.

Subpart M832.2—Commercial Item Purchase Financing

M832.201 Statutory authority.

The contracting officer is delegated the authority under FAR 32.201 to make the determination that terms and conditions for payment for commercial items are appropriate and customary in the commercial marketplace and are in the best interest of the United States.

M832.202 General.

M832.202-1 Policy.

(b) Before using commercial interim payment or commercial advance payment terms in solicitations or contracts exceeding the simplified acquisition threshold (as defined in FAR 2.101), the contracting officer shall request the approval of the head of the contracting activity (HCA). The approval of the HCA shall be based on the requirements of FAR 32.202-1(b) and (d). The contracting officer must fully support the request with the reasons why the proposed commercial interim payments or commercial advance payments are in the best interest of the Government. The approval may be in the format of a
D&F with the signatures of contracting office and the approving official.

M832.202-4 Security for government financing

(a)(2) The Office of Procurement, Acquisition, and Logistics (OPAL) has awarded a contract to Dun & Bradstreet (D&B) for VA COs to have unlimited access to multiple reports on contractor businesses as a source for information to help determine contractor responsibility. Utilizing these types of business reports will enhance the ability of COs to assess the financial and operational stability of prospective contractors. In the absence of, or in addition to, the D&B report information, COs should utilize the type of information as described in FAR 9.104-1, General standards.

Subpart M832.4—Advance Payments for Non-Commercial Items

M832.402 General.

Authority to make the determination described at FAR 32.402(c)(1)(iii) and to approve contract terms concerning advance payments, as provided by FAR 32.402(e)(1), is delegated to the head of the contracting activity (HCA).

M832.409-1 Recommendation for approval.

Before award, contracting officers shall submit a request for approval to use advance payment to the HCA. The request must include the information required by FAR 32.409-1 and must address the standards for advance payment in FAR 32.402(c)(1)(iii). (See an example of the determination in FAR 32.410.)

M832.409-2 Recommendation for disapproval.

If recommending disapproval, the contracting officer shall submit the information required by FAR 32.409-2 to the HCA.

Subpart M832.5—Progress Payments Based on Costs

M832.502 Preaward matters.

M832.502-2 Contract finance office clearance.

Contracting officers shall request approval from the head of the contracting activity (HCA) before taking the actions listed in FAR 32.502-2. The rationale and recommendations of the contracting officer must accompany requests for approval.
M832.503-6 Suspension or reduction of payments.

(a)(2) The contracting officer may suspend or reduce progress payments if the contractor is delinquent in delivery of supplies or performance of services in accordance with the due dates specified in the contract. Payment may resume when the delinquency is cured or when the contracting officer is satisfied that sufficient progress has been made and future deliveries or performance will be timely.

Subpart M832.6—Contract Debts

M832.607 Installment payments and deferment of collection.

M832.607-2 Deferment of collection.

(c)(2) The contracting officer shall forward the information required by FAR 32.607-2(c)(2) to the VA Financial Services Center.

(d) The Financial Services Center may authorize a deferment pending the resolution of appeal to avoid possible over-collections.

Subpart M832.7—Contract Funding

M832.703 Contract funding requirements.

M832.703-1 General.

(b) Use of incremental funding is limited as follows:

(1) The Federal Acquisition Streamlining Act (FASA) of 1994 provides the legal authority for contracting officers to enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year provided the contract performance period does not exceed one year.

(2) Without statutory authority, incremental funding may not be used for—

(i) firm-fixed price contracts; or

(ii) multi-year contracts that cannot be separated for performance by fiscal year.

The Department of Veterans Affairs does not have this authority.

(3) A contract for non-severable services cannot be incrementally funded. Examples are consulting studies, software development efforts, construction
services, or architect-engineer services.

Subpart M832.8—Assignment of Claims

M832.805 Procedure.

(d) As a best practice, after acknowledgment of receipt, the contracting officer should consider issuing a modification to the contract to reflect the assignment of claims and the changed payment information.

M832.805-70 Distribution/notification of assignment of claims.

(a) Prior to acknowledgement of receipt of an assignment of claims, and in addition to the requirements of FAR 32.805(d), the contracting officer shall submit the notice of assignment to the Office of General Counsel (OGC) for review and approval. Upon conclusion of OGC’s review and acknowledgement of receipt, the contracting officer shall:

(1) File the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the Government’s copy of the contract; and

(2) Forward a copy of the notice of assignment and instrument of assignment to the local finance office and to the payment office cited in the contract.

(b) Contracting officers must notify field facilities of any recognized assignment of payments for contracts under which payment for articles and services is certified and approved for payment in those field facilities.

Subpart M832.9—Prompt Payment

M832.904 Determining payment due dates.

(a) General.

(1) When preparing specification packages, contracting officers must give full consideration to the time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments. Contracting officers should consider the following before taking the actions in this section:

(i) The complexity of the project;

(ii) Workload;

(iii) Work site location; and
(iv) Recent interest payment history.

(2) After consideration of the factors in paragraph (a)(1), the contracting officer may specify a longer period in the solicitation and resulting contract—

(i) for constructive acceptance of goods or services specified in FAR—32.904(b);

(ii) for constructive acceptance of Architect-Engineer services in FAR 32.904(c); and

(iii) to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor’s performance under construction contracts as specified in FAR 32.904(d).

These revisions shall be included in solicitations before issuance. The contracting officer and the payment office must indicate agreement in writing (by memo or e-mail) to the negotiated payment terms before awarding the contract.

Subpart M832.11—Electronic Funds Transfer

M832.1106 EFT mechanisms.

(a) Domestic EFT mechanisms. The Assistant Secretary for Management/Chief Financial Officer (CFO) may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT mechanisms other than those authorized under FAR 32.1106(a).

(b) Nondomestic EFT mechanisms and other than United States currency. The Assistant Secretary for Management/Chief Financial Officer (CFO) may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT for payments to be received by or on behalf of a contractor outside the United States or Puerto Rico or for contracts paid in other than United States currency, as provided in FAR 32.1106(b).

Subpart M832.70—Electronic Invoicing Requirements

M832.7001-1 Data transmission.

(a) The contracting officer shall provide in the contract the current website address for VA’s Electronic Invoice Presentment and Payment System located at http://www.fsc.va.gov/einvoice.asp.

(b) The contracting officer may upon request provide the current X12 EDI
website address (http://www.x12.org) for additional information on EDI 810 and 811 formats.
Subchapter E—General Contracting Requirements

Part M833—Protests, Disputes, and Appeals

Subpart M833.1—Protests

M833.102-70 General—management of protests at VA.
M833.102-71 Contracting officer’s responsibilities.
M833.103-71 Contracting activity protest procedures.
M833.104-70 Procedures for protests to GAO.
M833.104-71 Management procedures for protests to GAO.
M833.105 Protests at the U.S. Court of Federal Claims.

Subpart M833.2—Disputes and Appeals

M833.209 Suspected fraudulent claims.
M833.211-70 Contracting officer’s final decision.
M833.212 Contracting officer’s duties upon appeal.
M833.102-70 General—management of protests at VA.

(a) Under VA’s procurement protest system, protesters may file a protest with VA Contracting Officers (CO). In the alternative, protesters may request an independent review by filing a protest with the Executive Director, Office of Acquisition and Logistics (ED/OAL).

(b) The Office of Risk Management and Compliance Service (RMCS) manages VA protests and appeals on behalf of the ED/OAL. The RMCS staff shall:

(1) Maintain a log of all protests submitted by contracting officers for review and all protests and appeals filed with the ED/OAL.

(2) Review contracting officers’ draft decision letters, when requested and upon receipt of all relevant documents. The RMCS Procurement Analyst shall recommend changes, as appropriate, to ensure the decisions are well-reasoned, protest issues are fully addressed, and VA’s position is adequately explained.

(3) Notify and obtain relevant information from contracting officers upon receipt of initial protests and appeals of contracting officers’ decisions filed with the ED/OAL.

(4) Prepare decision letters in response to protests filed with the ED/OAL that are well reasoned and explain the agency position.

(5) Include the following language in decision letters, as appropriate, when initial protests are filed with the ED/OAL:

“Should you disagree with this decision, you may file a protest with the Government Accountability Office (GAO). Protests filed with the GAO must be filed through GAO’s Electronic Protest Docketing System (EPDS) at https://epds.gao.gov, within 10 calendar days after receipt of this letter.”

(6) Obtain legal concurrence in decisions to protests filed with the ED/OAL prior to releasing the decision to the protester.

(7) Put forth best efforts to ensure protests filed with the ED/OAL are resolved within 35 calendar days after the protest filing pursuant to FAR 33.103(g).
(c) Contracting officers shall notify RMCS staff immediately of any protest filed with the contracting officer or U.S. Court of Federal Claims by forwarding a copy of the protest letter via the email address at EDPProtests@va.gov.

M833.102-71 Contracting officer’s responsibilities.

VA contracting officers shall:

(a) Follow the requirements in FAR 33.102(a), 33.103(f) and ensure compliance with VAAR 833.103-70 upon receipt of a protest.

(b) Provide their supervisors and their designated legal counsel a copy of the protest immediately upon receipt. Contracting officers shall also notify RMCS immediately of any protest filed with the contracting officer or U.S. Court of Federal Claims by forwarding a copy of the protest letter via the email address at EDPProtests@va.gov. In the email notification, contracting officers must state if they will or will not be forwarding a copy of their draft decision to RMCS for review. If the contracting officer requests RMCS review of their draft decision letter, an RMCS Procurement Analyst will be assigned and shall immediately acknowledge receipt of the request and collaborate with the contracting officer.

(c) Prepare a draft decision letter that is well-reasoned and explains the agency position as required by FAR 33.103(h).

(d) If an RMCS review was requested, submit draft decision letter and relevant documents to the assigned RMCS Procurement Analyst prior to obtaining legal review and concurrence.

(e) If an RMCS review was not requested, submit draft decision letter and relevant documents to the designated legal counsel for review and concurrence.

(f) Include the following appeal language (usually as the last paragraph) in all protest decision letters:

“Should you disagree with this decision, you may file an appeal with the Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (003A2C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or electronically at EDPProtests@va.gov. Any such appeal must be received within 10 calendar days after receipt of this letter. In the alternative, you may file a protest with the Government Accountability Office (GAO). Protests filed with the GAO must be filed through GAO’s Electronic Protest Docketing System (EPDS) at https://epds.gao.gov. Any GAO protest must be filed within 10 calendar days of this formal notification of, or actual or constructive knowledge of, an initial adverse agency action (as determined in 4 Code of Federal Regulations 21.0(e)). If you file an appeal with
the Executive Director, Office of Acquisition and Logistics, you may waive your right to further protest to the Comptroller General at a later date.”

(h) Issue a decision to protesters within 35 calendar days after the protest is filed pursuant to FAR 33.103(g). If additional time is required, provide a one-time best effort estimate to the protester as to when a final decision will be made.

(i) Provide the decision letter to the protester using a method that provides evidence of receipt pursuant to FAR 33.103(h).

(j) Provide a copy of the signed decision letter to RMCS via the email address at EDPProtests@va.gov, or to the assigned RMCS Procurement Analyst, if an RMCS review was received.

(k) Provide a copy of the signed decision letter to the VA attorney who concurred in the draft decision letter.

(l) Provide information as requested by RMCS analysts when protesters appeal the contracting officer’s decision with the ED/OAL.

M833.103-71 Contracting activity protest procedures.

(a) Action upon receipt of protest. If contract award in the face of a protest is necessary, the approving official for the determination identified in FAR 33.103(f)(1)(protests before award) and/or FAR 33.103(f)(3) (protests received within 10 days after contract award or within 5 days after a debriefing) shall be—

(1) The Head of the Contracting Activity (HCA) for protests to the contracting officer. If the HCA is also the contracting officer, see paragraph (2); or

(2) The ED/OAL, for a protest under the alternative review in 833.103-70(a)(2); or if the HCA is also the contracting officer.

(b) Protest after award. When a written protest is filed with the contracting officer after contract award, the following procedures apply:

(1) When FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer must seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis. If unsuccessful, the contracting officer must issue a stop-work order in accordance with contract clause FAR 52.233-3, Protest after Award.

(2) When suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, after consulting with OGC, the contracting officer must provide the protester a written decision as
provided in M833.102-71(h). The contracting officer will advise the protester of their appeal rights as provided in M833.102-71(f).

(3) When 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, after consulting with OGC, shall advise the contractor of the protest and invite the contractor to submit comments and relevant information.

**M833.104-70 Procedures for protests to GAO.**

(a) General.

(1) Per FAR 52.233-2, solicitations shall instruct interested parties to send a copy of any protest filed with the Government Accountability Office (GAO) to the contracting officer.

(2) OGC will prepare any response to the GAO on GAO protests.

(3) When a protest before or after award has been filed with GAO, the contracting officer must submit the documents listed in 33.104(a)(3)(ii), as appropriate, to the VA attorney assigned the protest case within 5 workdays after receipt of written notice of the GAO protest notification or by the due date established by the VA attorney.

(4) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(2).

(b) Protests before award. When VA receives notice from GAO of a pre-award protest filed directly with GAO, award will normally not be made until the matter is resolved. If the HCA has made a determination that award is necessary pursuant to FAR 33.104(b)(1), the Senior Procurement Executive (SPE) must approve the HCA findings. OGC is responsible for the GAO notification in FAR 33.104(b)(2).

(c) Protests after award. When, after award of a contract, VA receives notice from GAO of a protest filed directly with GAO, the contracting officer must, if required to do so by FAR 33.104(c)(1), immediately suspend performance. However, contract performance need not be suspended, despite the protest, if the SPE approves the HCA's findings required by FAR 33.104(c)(2) and GAO has been notified under FAR 33.104(c)(3). Authority to approve the HCA's findings is further delegated to the Deputy Senior Procurement Executive (DSPE). OGC is responsible for submitting the required GAO notification in FAR 33.104(c)(3).

(d) Approval of findings. Required approval under paragraph (b) or (c) of this section must be coordinated and submitted through RMCS.

(e) GAO protests rules and procedures. The GAO issues a descriptive guide protest timeline and other material that provides useful information to the GAO protests...
M833.104-71 Management procedures for protests to GAO.

(a) Risk Management and Compliance Service (RMCS) coordinates matters regarding protests with the Government Accountability Office (GAO). RMCS analysts shall:

(1) Receive protest notifications from GAO representatives and record/log each notice of protest.

(2) Submit GAO protest notifications to appropriate COs and their respective legal counsel. If RMCS analysts receive additional documents from GAO and other parties to the protest, such documents shall be forwarded to COs and VA legal counsel, as appropriate.

(3) Review the HCA’s written findings when a determination is made to award a contract in the face of a protest pursuant to FAR 33.104(b)(1) or continue contract performance in the face of a protest pursuant to FAR 33.104(c)(2). RMCS shall submit the HCA’s findings to the Senior Procurement Executive or the Deputy Senior Procurement Executive for approval, as appropriate.

(b) Contracting officers shall coordinate actions with RMCS and Office of General Counsel. A contracting officer involved in a GAO protest shall:

(1) Inform their supervisor immediately upon receipt of a GAO protest notification.

(2) Notify the contractor of the protest pursuant to the notification procedures in FAR 33.104 (a)(2) if the award has been made, or, if no award has been made, notify all parties who appear to have a reasonable prospect of receiving the award if the protest is dismissed or denied.

(3) Stay contract award or performance if the protest was filed in a timely manner to trigger the statutory stay as provided in FAR 33.104(b)(1) and (c)(1). The contracting officer may lift the stay if the HCA determines pursuant to FAR 33.104(b)(1) and (c)(2) that an award must be made or performance must continue in spite of the protest, provided such determination has been approved in accordance with VAAM 833.104-70(b) and (c).

(4) Forward the HCA’s determination and findings (D&F) to award a contract or continue contract performance, notwithstanding the protest, to RMCS analysts, who will submit to the SPE or the DSPE for approval, as appropriate, as required by VAAM 833.104-70(b) and (c).
(5) Discuss the protest with the VA attorney assigned the protest case immediately upon receipt of the protest to determine whether the issues raised warrant submission of a protest file. If a protest file is required, the CO shall submit the file to the VA attorney within 5 working days of receipt of the GAO protest notification from RMCS analysts or by the due date established by the VA attorney. The file shall include an index, and, as appropriate, the documents listed in FAR 33.104(a)(3)(ii).

M833.105 Protests at the U.S. Court of Federal Claims.

(a) Upon receipt of notification of a protest filed in the Court of Federal Claims (COFC) either from the protester’s counsel or from the Department of Justice (DOJ), contracting officers shall immediately provide written notice to their supervisor, designated legal counsel, and RMCS via the email address at EDProtests@va.gov. The contracting officer can review the court’s rules and procedures as provided in FAR 33.105.

(b) The contracting officer is responsible for providing information to the DOJ attorney assigned the case when requested and consulting with its designated VA legal counsel as necessary.

(c) Upon conclusion of the case, the contracting officer shall immediately inform its supervisor, its designated legal counsel, and RMCS of the court’s opinion or order(s).

Subpart M833.2—Disputes and Appeals

M833.209 Suspected fraudulent claims.

As provided in VAAR 833.209, the contracting officer must refer matters relating to suspected fraudulent claims to the VA, Office of Inspector General (OIG) for investigation and potential referral to the Department of Justice (DOJ). The contracting officer may not initiate any collection, recovery, or other settlement action while the matter is in the hands of the DOJ without first obtaining the concurrence of the U.S. Attorney concerned, through the OIG.

M833.211-70 Contracting officer's final decision.

(a) When a dispute cannot be settled by mutual agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall provide the contractor the contracting officer's final decision in the matter. The decision must be made within the time frames stipulated in the FAR, otherwise the claim may be deemed denied.

(b) The contracting officer must identify the decision, in writing, as a final decision 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. The contracting officer
must ensure that any required legal or technical review or concurrence is completed (see subpart 801.6) prior to rendering the final decision on the matter.

(c) The contracting officer should reference the Civilian Board of Contract Appeals (CBCA) as the board having jurisdiction on appeals.

(d) The CBCA encourages the prompt, efficient and inexpensive resolution of contract disputes through the use of alternative dispute resolution (ADR). It uses a variety of techniques intended to shorten and simplify, when appropriate, the formal proceedings normally used to resolve cases.

(e) When jointly requested by an agency and its contractor, the Board also provides to executive agencies alternative dispute resolution services on contract-related matters not covered by the Disputes statute (historical title of Act—Contract Disputes Act), whether those matters arise before or after a contract has been awarded.

(f) For more information on CBCA or ADR see: https://cbca.gov/

M833.212 Contracting officer's duties upon appeal.

(a) When a contracting officer receives notice of appeal in any form, the contracting officer shall do the following:

   (1) Acknowledge receipt and annotate the appeal with the date of mailing (or date of receipt, if otherwise conveyed).

   (2) Within 10 days, forward the original notice of appeal and a copy of the contracting officer’s final decision letter to OGC and any other office that may be impacted.

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer must assemble and transmit to the OGC, an appeal file consisting of all documents pertinent to the appeal, including the following:

   (1) The decision and findings of fact that are being appealed.

   (2) The contract, all modifications, including specifications and pertinent modifications, amendments, revisions or changes to any specifications, 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.
(5) Any additional information considered pertinent.
SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.  Subpart M836.1—General

M836.102 Definitions.
M836.103-70 Methods of contracting—policy.

Subpart M836.2—Special Aspects of Contracting for Construction

M836.202 Specifications.
M836.203 Government estimate of construction costs.
M836.205-70 Statutory cost limitations.
M836.209 Construction contracts with architect-engineer firms.
M836.212 Preconstruction orientation.
M836.213 Special procedures for sealed bidding in construction contracting.
M836.213-470 Notice of award.
M836.213-70 Randolph-Sheppard Act compliance.
M836.213-71 Completion items.
M836.213-72 [Reserved]
M836.213-73 Additive or deductive bid line items.
M836.213-74 Notice to proceed.
M836.213-72 Construction contracts with options.

Subpart M836.3—Two-Phase Design-Build Selection Procedures

M836.303-1 Phase One.

Subpart M836.6—Architect-Engineer Services

M836.601-3 Applicable contracting procedures.
M836.602 Selection of firms for architect-engineer contracts.
M836.602-1 Selection criteria.
M836.602-170 Application of selection criteria.
M836.602-2 Evaluation boards.
M836.602-4 Selection authority.
M836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

M836.604 Performance evaluation.
M836.605-70 Architect-Engineer prepared independent
government estimates.

M836.606  Negotiations.
M836.606-72  Contract price.
M836.606-73  Statutory fee limitation.

Subpart M836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

[RESERVED]

Subpart M836.71—Procedures for VA Evaluation Boards

M836.7100  General procedures.
M836.7101  Conduct of evaluation boards.

Attachments
Attachment M836-A  Sample Notice of Award
Attachment M836-B  Notice to Proceed Template
Attachment M836-C  A-E Evaluation Board Appointment Memorandum Template
Attachment M836-D  Combined Preselection/Selection Board Report Template
Attachment M836-E  Preselection Board Report Template
Attachment M836-F  Selection Board Report Template
M836.102 Definitions.

*Completion items* means construction needs identified which were omitted from the design, but that are essential to the operation of a constructed facility within the approved scope of the project.

*Completion items review board (CIRB)* means the board that reviews all completion item requests to ensure that the submitted items and request are valid.

*Critical path method (CPM)* means a network analysis technique used to predict project duration by analyzing which sequence of activities (which path) has the least amount of scheduling flexibility (the least amount of float). Early dates are calculated by means of a forward pass using a specified start date. Late dates are calculated by means of a backward pass starting from a specified completion date (usually the forward pass’ calculated project early finish date).

*Independent government estimate (IGE) or Independent Government Cost Estimate (IGCE)* is a cost estimate developed by the Government requiring activity based on requirements of a Statement of Work or Performance Work Statement (in the case of services) or other requirements and specification documents. In the Department of Veterans Affairs (VA) construction environment, the IGE is generally prepared by either the government’s own design engineer or estimator, or by the Architect-Engineer firm that prepared the design.

*Major acquisition* when used in construction means an acquisition valued above $20 million, including options. This includes capital projects (investment) that require special management attention because of their: (1) importance to the agency’s mission; (2) high development, operating, or maintenance costs; (3) high risk; (4) high return; or (5) significant role in the administration of the agency’s programs, finances, property, or other resources.

*Network analysis system (NAS)* means a schedule that demonstrates fulfillment of contract requirements as well as coordinating and monitoring work under the contract (including all activities of subcontractors, equipment vendors and suppliers.

*Preconstruction orientation* (sometimes referred to as the pre-performance conference, preconstruction conference, or postaward orientation conference) and commonly referred to as a “kick-off” meeting means a meeting generally held at the job site to establish local ground rules, both covered (e.g., labor standards clauses) and not covered (e.g., VA local
facility regulations) by the contract documents that are directly related to Contractor actions and interactions on the VA facility. The meeting can be conducted face-to-face, via teleconference or videoconference. The postaward orientation, or conference, serves as a substantive review of the contract terms and conditions prior to contractor work performance. The overall goal is to implement a postaward procedure that efficiently allocates time and resources.

*Resident Engineer (RE)* means an engineer that oversees major construction contracts. An RE, when appointed in writing, may serve as the contracting officer’s representative (COR) on a contract provided such appointment would not place the appointee in a position to initiate a requirement, place an order, and receive, inspect and accept goods or services.

**M836.103-70 Methods of contracting--policy.**

(a) The VA has not been granted specific authority to conduct one-phase design-build procurements, therefore, the contracting officer shall not award a contract based on this solicitation method. The term “one phase design build” or “one-step turnkey selection procedures” means procedures used for the selection of a contractor to perform both the design and construction of a facility using performance specifications.

(b) When soliciting and awarding indefinite-delivery type contract vehicles for construction and Architect-Engineer (A-E) services, the contracting officer shall refer to the Indefinite-Delivery Indefinite-Quantity (IDIQ) Guide, for any guidance on IDIQs in general and specific construction-related guidance. See VAAM M816, Appendix M816-A.

**Subpart M836.2—Special Aspects of Contracting for Construction**

**M836.202 Specifications.**

(b) The following is a link to the Office of Construction and Facilities Management (CFM) website for the Technical Information Library (TIL) and the A-E Design Submissions Requirements Program Guide 18-15 (PG-18-15). The website provides design and construction standards for the VA. The [TIL](#) is the source for VA’s electronic design and construction information.

**M836.203 Government estimate of construction costs.**

(d) A copy of the IGE, signed and dated by the preparer, shall be submitted to the contracting officer at the time of submission the Request for Procurement package. An updated/revised IGE will also be submitted to the contracting officer before release of a solicitation amendment that may affect price.

(e) [Contract Pricing Reference Guides](#) have been developed jointly by the Federal Acquisition Institute and Air Force Institute of Technology and, provide valuable information on quantitative techniques for contract pricing.
M836.205-70 Statutory cost limitations.

(a) Contracting officers shall not award contracts for minor construction projects in excess of the major construction statutory limit for a VA major medical facility project. For the purposes of this part, the term “VA major medical facility project” means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than the major construction statutory threshold as defined in 38 U.S.C. 8104. This amount is currently defined as exceeding $20,000,000, in which case the appropriate type of funding and approval is required in advance of such awards.

(b) Prohibition against splitting requirements. Requiring activities and contracting officers shall not break down a project requirement into multiple projects that are each less than the statutory cost limitation, that when aggregated, would exceed the statutory major medical facility threshold set forth in 38 U.S.C. 8104(a)(3).

M836.209 Construction contracts with architect-engineer firms.

(a) This section applies to design-bid-build contracts only. No contract for construction of a project may be awarded to the firm that designed the project, or to its subsidiaries or affiliates, without the written approval of the Head of the Contracting Activity (HCA) or authorized representative. For the Office of Construction and Facilities Management (CFM), where the HCA approves the award of all construction contracts, the Deputy Senior Procurement Executive will be the approval authority.

(b) Any request for approval from the requiring official shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest. In no case, shall the A-E firm that prepared the drawings and specifications be awarded a contract, modification to existing contract or task order to supervise or inspect on behalf of the government, the construction of the facility involved.

M836.212 Preconstruction orientation.

(a) Attendees should include the prime contractor's representative and any identified subcontractors, contracting officer and the RE/Project Manager (PM), COR, requiring activity representatives, VA facility safety and security officials. The A-E of record may attend the preconstruction conference if the A-E’s contract requires it.

(b) The contracting officer:

1. Conducts the meeting, but the RE/PM, COR and requiring activity and other Government representatives should have a thorough understanding of the requirement and be prepared to address issues such as phasing of work (if any), government furnished property items, and coordination of access to the construction area, patient or restricted areas. VA Form 3386, Preconstruction Orientation Checklist, shall be used to document meeting discussions.
(2) Should resolve issues as noted in (1) above with key Government officials before the preconstruction orientation and present a unified VA position in the Contractor’s presence, to achieve a clear and mutual understanding of all contract requirements and to identify and resolve potential problems. A preconstruction conference may be conducted face-to-face, via teleconference or videoconference.

(3) Shall inform the prime contractor of the necessity to include labor standard clauses in all subcontracts orally or with a preconstruction letter. The contracting officer shall document the discussion of the necessity to include labor standards (FAR subpart 22.4 and VAAM M822.406-1), and subcontracting plan requirements (FAR 19.704) in all subcontracts.

(4) Shall remind the contractor that any errors or omissions in the contract drawings or specifications must be provided promptly but in no case later than the start of related work.

(5) Shall enter the preconstruction orientation data into VA’s Electronic Contract Management System (eCMS).

(c) The role of Government representatives participating in the conference is to adequately convey and ensure that VA interests and resources are protected. The Preconstruction Conference is not the time to discuss potential change requests unless the changes have a direct impact on user mission, construction startup or contractor progress.

(d) A copy of the meeting minutes shall be placed in the official contract file and uploaded into eCMS in the Award Action Briefcase, under index number “C05 Pre-Construction Minutes.”

**M836.213 Special procedures for sealed bidding in construction contracting.**

**M836.213-470 Notice of award.**

(a) The contracting officer shall provide the apparent successful bidder a notice of award for construction contracts where performance or payment bonds are required.

(b) A notice of award:

(1) Is used to provide a copy of the contract in accordance with FAR 14.408-1.

(2) Does not authorize the successful bidder to perform.

(3) Advises the contractor to provide bonds and insurance.

(4) Reminds the contractor that any delays in submission for approval of the bonds and insurance certificate may delay issuance of the Notice to Proceed (NTP).

(c) The notice of award can be issued by any formal written means such as a letter or electronic means. The notice should be substantially the same as the sample format provided as Attachment **M836-A** and filed in the contract file as well as in the eCMS briefcase under index number “C08, Award Letter/Contract Receipt/Notice to Proceed.”
M836.213-70  Randolph-Sheppard Act compliance.

(a) The Randolph-Sheppard Act, 20 U.S.C. 107, gives priority to blind persons licensed by a State agency in the operation of vending facilities on Federal property (owned, leased, or occupied). The Executive Director, Office of Construction and Facilities Management, establishes VA policies for achieving Randolph-Sheppard Act compliance and liaisons between VA and the Department of Education, the Federal department that oversees program compliance. The Executive Director, Office of Construction and Facilities Management is responsible for preparation and submission of VA’s annual report of activity to the Department of Education.

(b) Locating sites for operation of vending facilities by blind vendors. VA contracting activities shall ensure the required determination is made regarding whether there is a satisfactory site or sites for the location and operation of vending facility space by blind vendors before undertaking procurement actions related to the following:

1. **Owning, renting or leasing buildings.** In accordance with 34 CFR 395.31(a), effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor.

2. **Constructing, substantially altering, or renovating or substantially renovating occupied buildings.** In accordance with 34 CFR 395.31(b), the design for such construction, substantial alteration, or renovation or substantial renovation must include a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. As used in this part and as referenced in 34 CFR 395.31(b), *substantial alteration or renovation of a building* means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor. (Note: Converting patient wards to private rooms probably would not meet this definition, nor would repairs to a roof, seismic reinforcement, or many other structural alterations. Regional Counsels can advise whether specific projects will require notification.)

(c) **Written notice to State licensing agency of intention to acquire or otherwise occupy buildings and determination that a building contains a satisfactory site or sites for the location and operation of a vending facility by a blind vendor.** The VA shall provide a written notice to the appropriate State licensing agency of its intention to acquire or otherwise occupy such buildings as set forth in 34 CFR 395.1(a) and (b) when the VA undertakes to acquire by ownership, rent, or lease, or to otherwise occupy a building—
(1) Containing at least 15,000 square feet of interior space to be used by the Government (in buildings where services are to be provided to the public); and

(2) In which 100 or more Federal employees are located during normal working hours.

(d) **Content of written notice.** Such written notice shall—

1. Be provided by certified or registered mail with return receipt;
2. Be provided as early as practicable, but no later than 60 days prior to such intended action;
3. Indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied; and,
4. Further assure that the State licensing agency, subject to the approval of the Secretary of the Department of Veterans Affairs, as delegated to the Executive Director, Office of Construction and Facilities Management, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building.

(e) A copy of the written notice to the State licensing agency and the State licensing agency’s acknowledgement shall be provided to the Secretary of the Department of Education.

**M836.213-71 Completion items.**

Approval of completion items for major construction projects shall be subject to review by the Completion Items Review Board (CIRB). The authority, composition and procedures for the CIRB are described in VA Directive 0411, Completion Items Review Board.

**M836.213-72 [Reserved]**

**M836.213-73 Additive or deductive bid line items.**

(a) For additive or deductive bid line items, the contracting officer shall:

Use a bid schedule with—

(i) A first or base bid line item covering the work generally as specified; and,

(ii) A list of priorities that contains one or more additive or deductive bid line items that progressively add or omit specific features of the work in a stated order of priority.

(2) Before opening the bids, record in the contract file the amount of funds available for the project.
(3) Determine the low bidder and the bid line items to be awarded in accordance with the procedures in the clause at 852.236-92, Notice to Bidders—Additive or Deductive Bid Line Items.

(b) Contracting officers shall not modify the resulting contract to include any additive or deductive bid line item that was not made a part of the contract at the time of award.

(c) Contracting officers shall not mix additive and deductive bid line items in the same solicitation.

M836.213-74 Notice to proceed.

(a) The NTP is the formal instruction from the contracting officer to the contractor to start work on the project. This notice authorizes the contractor to commence work and establishes the start date for the contract performance period. The resident engineer, COR and requiring activity shall coordinate with the contracting officer in establishing this date to ensure that the start date is consistent with any critical needs. The NTP letter may instruct the contractor to commence work for actual construction work or to commence work limited to a particular segment of the work (e.g., mobilization, attendance at preconstruction conference, preparatory civil work). Contracting officers shall be diligent in making full contracting awards after issuance of a limited or partial NTP as the Board of Contract Appeals has held that unreasonable delays in making full award to be a compensable constructive suspension of work. See Attachment M836-B for a sample NTP template.

(b) The NTP may:

(1) Be sent only after the contractor has provided performance and payment bonds or payment protection, completed contract forms, where applicable, and the contracting officer has accepted those documents.

(2) Be sent by traceable means such as certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The contracting officer shall establish a start and completion date that takes into consideration the time required for the NTP to arrive by registered mail or other proven method of delivery that provides evidence of receipt.

(3) Advise the contractor of the date the actual construction work shall commence and the number of calendar days or specific date the work shall be completed. The commencement date may also be stated as a number of calendar days after contractor’s receipt of the notice to proceed. The completion date may be stated in the number of calendar days after the commencement date or after contractor’s receipt of the notice to proceed. Entries in Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration or Repair), Block 11 shall be adjusted accordingly.

(c) At the time the NTP is sent to the contractor or presented at the preconstruction orientation, the contracting officer shall furnish a copy to the COR and, if requested, to the RE/PM or the Chief, Engineering Service.
(d) The contracting officer shall file a copy of the NTP along with the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service in the official contract file and in the associated eCMS briefcase. When certified mail or other method of certified delivery is used, the contracting officer shall also file the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service with the notice to proceed in the contract file and eCMS briefcase under index number “C08, Award Letter, Contract Receipt, Notice to Proceed.”

M836.272 Construction contracts with options.

In accordance with FAR 22.404-12, contracting officers are required to incorporate a current wage determination at the exercise of option years and any extension period. For additional guidance pertaining to applicability of the Construction Wage Rate Requirements Statute, 40 U.S.C. chapter 31, subchapter IV, in construction contracts with option terms see VAAM M822.404.

Subpart M836.3—Two-Phase Design-Build Selection Procedures

M836.303-1 Phase one.

(b) The number and identity of the most highly qualified offerors selected to submit phase two proposals are considered “Source Selection Information” as defined in FAR 2.101 and shall only be disclosed to persons specifically granted access to source selection sensitive information.

Subpart M836.5—Contract Clauses

M836.515-70 Network analysis system—critical path method.

(a) The VA requires the use of the NAS-CPM on all major acquisitions or other VA projects where the best interest of the Government would be served by its use. It is intended to:

(1) Obtain information and data that are needed to identify, manage, and resolve potential project problems;

(2) Control documents, manage, and monitor job site progress; and,

(3) Establish realistic construction project duration(s).

(b) Upon approval by the contracting officer, the CPM becomes the approved project schedule and payments for work performed may be made.

(c) The effect that changes or delays have on a CPM schedule is determined by a comparison of the schedules before and after the delaying activities is incorporated into the CPM Network. Normally, the contractor is entitled to additional contract time only if the delay extends beyond the contract completion date. Additionally, delays to the project, due to strikes, weather, and other acts of God, or facts out of the contractor’s control are
usually the only scheduling problems that require an "after-the-fact" CPM analysis. Once work on the project resumes, the CPM analysis can be made to determine the delay impact to the schedule.

(d) Additional information concerning the NAS can be found at the CFM technical library.

Subpart M836.6—Architect-Engineer Services

M836.601-3 Applicable contracting procedures.

(e) See Architect-Engineer Information and Cost Estimating, CFM for additional instruction and guidance.

M836.602 Selection of firms for architect-engineer contracts.

M836.602-1 Selection criteria.

(6)(i) The following selection criteria along with those specified in FAR 36.602-1 shall be listed in their relative order of importance in the announcement:

(A) The extent to which potential contractors identify and commit to the use of service-disabled veteran-owned small businesses, veteran-owned small businesses, and other types of small businesses as subcontractors.

(ii) Whenever post-award construction services will be required of the A-E firm, the following selection criteria shall be listed in relative order of importance in the announcement:

Experience in construction period services to include professional field inspections during the construction period, review of construction submittals, support in answering requests for information during the construction period, and support of construction contract changes to include drafting statements of work, and cost estimates shall be included as an evaluation criterion when construction period services is included in the statement of work for A-E services.

M836.602-170 Application of selection criteria.

(a) Boards will evaluate firms’ qualifications strictly on the basis of the announced selection criteria and their stated order of importance.

(b) The board shall consider the specific experience and qualifications (i.e., education, training, registration, certifications, overall relevant experience, and longevity with the firm) of personnel proposed for assignment to the project, and their record of working together as a team when evaluating professional qualifications. The lead designer in each discipline must be registered but does not have to be registered in the particular state where the project is located.

(c) When evaluating specialized experience, do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions,
bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition. The board shall consider at least five, similar projects and how well the proposal addresses technical capabilities in design quality management procedures, Computer-Aided Design and Drafting/Building Information Modeling, equipment resources, and laboratory requirements for the firm and any proposed subcontractors. Where appropriate, also evaluate their experience in energy conservation, pollution prevention, waste reduction and the use of recovered materials. The effectiveness of their proposed project team (including management structure, coordination of disciplines, subcontractors, and prior working relationships) should also be examined.

(d) When evaluating capacity, consider the volume of work awarded by VA during the previous 12 months. Use data extracted from the Federal Procurement Data System. Consider the full potential value of any current indefinite delivery contracts that a firm has as well. Also, assess the available capacity of key disciplines to perform the work in the required time.

(e) When evaluating past performance, consider superior performance ratings on recently completed VA projects as well as the reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness. Also, consider, as appropriate, the record of significant claims against the firm because of improper or incomplete architectural and engineering services. When evaluating location consider knowledge of the locality separately from geographic proximity. Examples include knowledge of geological features, climatic conditions, or local construction methods that are unusual or unique.

M836.602-2 Evaluation boards.

(a) The Head of the Contracting Activity, Office of Construction and Facilities Management, or designee; the Director of Design and Construction Services for the National Cemetery Administration; the Director, Office of Administration and Facilities for Veterans Benefits Administration; or for field facility projects, the facility or Veterans Integrated Service Network (VISN) Chief of Engineering shall:

(1) Nominate board members.

(2) Ensure the Chairperson nominated is a registered or licensed engineer, architect or land surveyor, as appropriate for the type of work and has completed source selection training.

(3) Ensure non-registered or unlicensed engineers, architects, and land surveyors to serve on selection boards have comparable education, knowledge and experience that would qualify the individual for professional registration.

(4) Establish and maintain records of each non-registered or unlicensed individual's education, knowledge and experience relied upon in determining nomination for membership on preselection or selection boards is appropriate for the type of work being procured.
(5) Ensure all board members comply with the procurement integrity requirements of FAR 3.104 and sign a Nondisclosure Agreement. Provide the agreements to the contracting officer for the official contract files.

(b) The Head of the Contracting Activity, for the Office of Construction and Facilities Management, or designee; the Director, Office of Construction Management for National Cemetery Administration; the Director, Office of Administration and Facilities for Veterans Benefits Administration; or for field facility projects, the facility or Veterans Integrated Service Network Acquisition Director shall:

(1) Use Attachment M836-C, A-E Evaluation Board Appointment Memorandum Template, to document the appointment of evaluation board members to the selection boards.

(2) Ensure that the Chairperson has equivalent technical experience and has extensive experience on A-E evaluation boards. A registered or licensed professional in engineering, architecture, or landscape architecture is preferred.

(3) Ensure total board membership consists of no fewer than three and no more than five members including the Chairperson.

(4) Ensure boards are composed of highly qualified professional employees having collective experience in architecture, engineering, construction, and acquisition, as well as the specific type of technical work being contracted. One of the members shall be a Level III FAC-C certified contract specialist.

(5) Ensure nongovernment consultants are not used as voting members.

M836.602-4 Selection authority.

The Executive Director, Office of Construction and Facilities Management, or designee; the Director, Office of Construction Management for National Cemetery Administration; the Director, Office of Acquisition for Veteran Benefits Administration; or for field facility projects, the facility or Veterans Integrated Service Network Acquisition Director, or any warranted individual one level above the contracting officer making the award, are designated as the approving officials for the recommendations of the respective evaluation boards.

M836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The evaluation board may use either of the procedures provided in FAR 36.602-5 to select firms for A-E contracts below the simplified acquisition threshold. The board will document its decision in a combined Preselection/Selection Board Report (see Attachment M836-D).

M836.604 Performance evaluation.

The COR or resident engineer shall prepare a separate performance evaluation in Contractor Performance Assessment Report System (CPARS) after actual construction of
any contract $35,000 or more, and for each A-E contract that is terminated for default regardless of contract value. Ordinarily, the evaluating official should be the person most familiar with the A-E contractor’s performance.

M836.605-70 Architect-Engineer prepared independent government estimates.

The contracting officer shall ensure that the A-E prepared IGE has been updated to include any adjustment for escalation of prices before relying on an estimate for price analysis purposes. The IGE shall also be updated to reflect any design changes (both additions and deletions) injected by the Government since receipt of the initial 100% design package. This is especially important when dealing with an older design. Verify that facility occupants or requirements have not changed without a commensurate adjustment to the project cost estimate.

M836.606 Negotiations.

M836.606-72 Contract price.

(a) Where negotiations with the top-rated highly qualified firm are unsuccessful, the contracting officer shall, after coordination with the Executive Director, Office of Construction and Facilities Management, the Director, Office of Construction Management for the National Cemetery Administration, or the facility or Veterans Integrated Service Network Acquisition Director, technical reviewers, and legal reviewers, as appropriate, terminate the negotiations and undertake negotiations with the firm next in order of preference.

(b) The contracting officer shall submit a recommendation for award of the contract at the negotiated fee to the Associate Executive Director, Office of Facilities Acquisition for the Office of Construction and Facilities Management; the Director, Office of Construction Management for National Cemetery Administration or for field facility projects, the facility or Veterans Integrated Service Network Acquisition Director, technical reviewers, and legal reviewers, as appropriate. A copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, a “Cost and Pricing Analysis Report” if received, shall accompany the recommendation.

M836.606-73 Statutory fee limitation.

The six percent fee limitation applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the six percent limit. Additionally, in rare cases it may be necessary to deduct the cost of what is referred to as “lost design” (uncompensated A-E firm design effort). To assure that the fee limitation is not violated, the contracting officer shall maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.
Subpart M836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements – [Reserved]

Subpart M836.71—Procedures for VA Evaluation Boards

M836.7100 General procedures.

(a) Information used by boards. Boards will only consider the following information:

1. SF 330, Parts I and II.
2. Any required supplemental information.
4. VA contract award data.

A board will not assume qualifications which are not clearly stated in a firm's submission or available from CPARS. A board will review the entire submission of each firm and not excerpts or summaries. A firm will not be contacted to clarify or supplement its submission, except during the interviews with the most highly qualified firms. Boards shall not consider any cost factors.

(b) Determining A-E proposal responsiveness. A-E submissions shall be handled by the Government in accordance with FAR 15.207 and 15.208, including the late proposal rules in FAR 15.208. A firm will not be considered if it’s SF 330, Part I is not signed, unless the SF 330, Part I is accompanied with a signed cover letter or a current signed SF 330, Part II. In accordance with FAR 36.603(b), do not consider a firm that does not submit a SF 330, Part II with its SF 330, Part I, or have one on file. Firms with SF 330, Part II on file less than 3 years old must be considered by the board provided they have responded with Part I of the SF 330. A firm may not be eliminated simply for failing to submit certain information or for altering the format of a SF 330. However, a firm may be recommended as not qualified or ranked low if missing, confusing, conflicting, obsolete or obscure information prevents a board from reasonably determining that a firm demonstrates certain required qualifications.

(c) Evaluation method. A board may use any qualitative method such as adjectival or color coding but not numbers, to evaluate and compare the qualifications of the firms relevant to each selection criterion.

(d) Conduct of board meetings. Board meetings should be held in areas isolated as much as possible from distractions. Sufficient time should be set aside for the meetings to proceed continuously until they are finished. Board members should schedule their other activities so that interruptions of the board meetings are held to an absolute minimum.

(d) Reports. The documentation must reflect the final consensus of the board. If individual evaluations are included, then the report must discuss how any significant differences among the evaluations were resolved. A board must retain documents, and worksheets
generated during its evaluation so that the evaluation is sufficiently documented, and allows review of the merits of a potential bid protest. Failure to retain evaluation documents will leave the contracting officer susceptible to the bid protest risk of presenting a record with inadequate supporting rationale for the Comptroller General or court to find the selection decision reasonable. Handwritten worksheets are acceptable. Label the cover and each page of the report containing source selection information with "SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104" and protect the documents as required by FAR 3.104-5. Protect personal worksheets as well. Board members must not discuss the evaluation results with anyone who does not have a specific acceptable reason to know.

M836.7101 Conduct of evaluation boards.

(a) Preselection board. The board will completely evaluate each firm, even if a firm does not demonstrate certain required qualifications. The board must discuss the evaluation of all firms until consensus on each is reached. The firms that demonstrate better aggregate qualifications relevant to the primary selection criteria are considered highly qualified. A preselection board will not consider any secondary selection criteria. A preselection board will not be restricted to a specific or maximum number of firms for referral to a selection board. The Preselection Board Report (see Attachment M836-E) must clearly identify the specific weak or deficient qualifications of each firm not recommended as highly qualified. The preselection board recommends at least three firms considered to be the most highly qualified, in order of preference.

(b) Selection Board. All members must personally evaluate the SFs 330 of all of the highly qualified firms. If more than one contract will be awarded from the same synopsis, then sufficient firms must be recommended to ensure that at least two most highly qualified firms remain “in reserve” when negotiations commence on the final contract. After the interviews or presentations, a board will, by consensus, rank the most highly qualified firms in order of preference using the primary selection criteria. If two or more firms are technically equal, secondary criteria – location and equitable distribution of work - may be used as “tie-breakers” and the final ranking of firms decided. Firms are technically equal when there is no meaningful difference in their aggregate qualifications relative to the primary criteria. If more than one contract will be awarded from the same synopsis, the number of highest qualified firms must at least equal the number of anticipated contracts. The secondary factors will be used to establish a ranking order for the highest qualified firms, and hence, the order for negotiation. The A-E Selection Board Report (see Attachment M836-F) must:

(1) Clearly describe the reasons why each eliminated firm was less qualified than the most highly qualified firms,

(2) Summarize the relative strengths of each most highly qualified firm with respect to the selection criteria, and

(3) Clearly describe the rationale for the relative ranking of each firm.
Subpart M837.1—Service Contracts—General

Sec.
M837.102 Policy.
M837.102-70 Performance specifications and quality assurance surveillance plans.
M837.102-71 Guidebook for the acquisition of services.
M837.102-72 Market research report guide.
M837.104-70 Certification non-personal service contracts.
M837.107-70 Service contract labor standards wage adjustments.

Subpart M837.2—Advisory and Assistance Services

M837.270 Acquisition of audit services.

Subpart M837.4—Nonpersonal Health Care Services

M837.401 Policy.
M837.401-70 Performance specifications and quality assurance surveillance plans for medical services.
M837.401-71 Guidance for health care resources contracting—buying.

Subpart M837.70—Mortuary Services

M837.7000 General.
M837.7001 [Reserved]
M837.7002 Method of Acquisition.
M837.7003 Area of performance and distribution of contracts.
M837.7004 Unclaimed remains.
Subpart M837.1—Service Contracts—General

M837.102 Policy.

Each head of the contracting activity (HCA) shall ensure that the Integrated Oversight Process, as prescribed in Procurement Policy Memorandum 2017-01, is followed to ensure:

(a) Performance-based Service acquisitions are used to the maximum extent;
(b) Competition is fully promoted;
(c) Adequate evaluation factors are utilized including cost/price analysis; and
(d) Conflicts of interests are avoided.

M837.102-70 Performance specifications and quality assurance surveillance plans.

In addition to the information contained in FAR 37.1, additional material on conducting performance-based acquisition and quality assurance surveillance plans for services can be found in the Office of Federal Procurement Policy’s “Steps to Performance-Based Service Acquisition Guide”.

M837.102-71 Guidebook for the acquisition of services.

The Acquisition Center of Excellence for Services was established to provide a clearinghouse of service contract best practices for both the public and private sectors. The Office of Federal Procurement Policy has partnered with the Department of Defense to use the Defense Acquisition University’s Acquisition Community Connection, or Community Hub, website to comply with the requirement imposed by the Service Acquisition Reform Act. Acquisition personnel are encouraged to use this resource to research best practices, guidance and other internet links.

M837.102-72 Market research report guide.

See the VA Market Research Guide for Acquisition Teams for guidance on use of the Market Research Report to conduct and document market research.
M837.104-70 Certification of non-personal services contracts.

The contracting officer shall ensure that the contract file contains a Non-Personal Services Contract Certification, prepared by the program office documenting the analysis that neither the services nor the manner in which they will be managed will result in personal services.

M837.107-70 Service contract labor standards wage adjustments.


Subpart M837.2—Advisory and Assistance Services

M837.270 Acquisition of audit services.

Project offices with an Office of Inspector General shall refer to the Advisory and Assistance Services—A Practical Reference Guide when developing requirements for advisory and assistance services. This guide was prepared at the request of the President’s Council on Integrity and Efficiency Inspection and Evaluation Committee.

Subpart M837.4—Nonpersonal Health Care Services

M837.401 Policy.

M837.401-70 Performance specifications and quality assurance surveillance plans for medical services.

Medical Product and Service Codes Q501-Q527 are exempt from performance work statement (PWS) guidance. However, sample PWS’ and quality assurance surveillance plans for Healthcare Procurements are located at the VA Business Intelligence Tool website. Additional samples can be found on the Defense Acquisition University website.

M837.401-71 Guidance for health care resource services—buying.

Contracting officers are responsible for procuring health care resources in accordance with the procedures provided in VA Directive 1663, Health Care Resources Contracting—Buying.
Part M837—Mortuary Services

M837.7000 General.

This subpart establishes procedures for the procurement of funeral and burial services for deceased veterans, as provided in 38 U.S.C. 2302, 2303, and 2308 when it is determined that a contract is more efficient and cost-effective than the use of a purchase card.

M837.7001 Reserved.

M837.7002 Method of acquisition.

(a) Requirements type contract. Each Veterans Health Administration (VHA) Regional Procurement Office of Veterans Benefits Administration (VBA) regional office shall consider using a requirements contract for the estimated requirements of mortuary services for unclaimed veteran remains within their region when the estimated annual requirements for such services are expected to reach ten or more. Use a requirements type contract (see FAR 16.503).

(b) Purchase card. Where no contract exists, use the purchase card to obtain mortuary services. Or, if proceeding with a contract, payment terms should be included to use the purchase card as a method of payment.

M837.7003 Area of performance and distribution of contracts.

(a) Contracts for mortuary services shall define the geographical area to be covered by the contract by—

Using political boundaries, streets, or other features as demarcation lines; and,

Identifying the carrier terminal to be used as a pickup or delivery point.

(b) Copies of the contract shall be distributed to each facility authorized to use the contract.

M837.7004 Unclaimed remains.

(a) VBA procedures at 38 CFR 3.1708(d) provide burial procedures when a veteran’s remains are unclaimed and the Director of the VA regional office in the area in which the veteran died is responsible for completing arrangements for burial.

(b) VHA Handbook 1601B.04, Decedent Affairs, provides burial procedures for situations where the remains of a veteran at a VA facility or a non-VA facility under authorized admission at VA expense are unclaimed and the facility Director is responsible for requesting funeral and burial services.
SUBCHAPTER G—CONTRACT MANAGEMENT

PART M843—CONTRACT MODIFICATIONS

Subpart M843.1—General

Sec.
M843.101 Definitions.
M843.102 Policy.
M843.102-70 Contract scope considerations.
M843.102-71 Execution of modifications by VA contracting officers.

Subpart M843.2—Change Orders

M843.201-70 Policy.
M843.202-70 VA authority to issue change orders.
M843.204-70 Definitization of unpriced change orders.
M843.204-71 Unpriced contract modification language.

Subpart M843.70—VA Modification Procedures

M843.7000 Special procedures for price negotiation in construction contract modifications.
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M843.101 Definitions.

As used in this part—

Consideration means something of value one party exchanges with another party, to induce the parties to form a mutual contractual commitment. It may take many forms, including monetary increases or decreases, changes in specifications or work statements, delivery schedules, payment time frames, or other contract terms and conditions.

Stop-Work Order means a suspension of work or work stoppage. When required, a stop work order should be issued immediately. Orders may take the form of either a letter or modification. Contracting officers may issue stop work orders for a period of 90 days or less. Orders greater than 90 days must be agreed to by the contractor.

M843.102 Policy.

M843.102-70 Contract scope considerations.

(a) Scope determinations are not required for administrative changes (FAR 43.101) issued as modifications that do not impact the substantive rights of the parties (e.g., a change in the paying office or the appropriation data) or unilateral modifications that are authorized by clauses other than the changes clause (e.g., Property clause, Options clause, or Suspension of Work clause (FAR 43.103(b)(3))).

(b) The contracting officer’s scope determination shall be documented as a memorandum for the record (MFR). The MFR, at a minimum, shall document the following:

(1) Nature of work to be performed under the modification compared to the nature of the work performed under existing contract, delivery order or task order;

(2) Amount of effort required to perform the work required by the modification compared to the amount of effort required to perform the existing contract, delivery order or task order;

(3) Changes in quantity or quality of deliverables which exceed what offerors who proposed on the existing contract, delivery order or task order should have reasonably contemplated;
(4) Scope of the original competition and whether offerors who proposed on the existing contract, delivery order or task order should have reasonably contemplated the proposed modification;

(5) Cumulative impact of multiple changes/previous modifications; and

(6) Changes in time of performance.

(7) General Counsel written opinion, if sought, as to whether the proposed modification is within scope of the basic contract, delivery order or task order.

(8) Technical expert analysis as to whether the proposed modification is within scope of the basic contract, delivery order or task order.

(c) In-scope changes to an existing contract shall be issued in accordance with FAR subpart 43.2.

(d) When a proposed change requires a modification outside of the general scope of a contract, the contracting officer must—

(1) Issue a modification in accordance with the non-competitive procedures at FAR 6.303, 8.405-6, or 16.505(b)(2);

(2) Conduct market research to determine whether an award to a Vendor Information Page (VIP) verified Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) firm in accordance with VAAR subpart 819.70 is feasible; and

(3) If market research reveals that two or more VIP verified SDVOSB or VOSB firms are not available, competitively solicit the requirement.

M843.102-71 Execution of modifications by VA contracting officers.

(a) General. This subsection does not apply to commercial items unless authorized at a level above the contracting officer.

(1) Bilateral modifications shall not be signed by the government prior to obtaining the contractor’s signature signifying acceptance of the additional requirements. If the contractor places conditions on the modification, a written reply shall immediately be sent to the contractor stating that the government will not execute the modification as returned and will reopen negotiations.

(2) All supplemental agreements shall include the “Contractor’s Statement of Release” in accordance with FAR 43.204(c)(2) unless waived by the head of the contracting activity (HCA).
(3) Approval one level above the contracting officer is required when the price of a modification will exceed the original contract price or when the sum of the modifications issued to date, together with the one proposed, exceeds the original contract price.

(4) A government estimate is not required for contract modifications less than $150,000. However, regardless of the absence of a government estimate, a determination of price reasonableness shall still be made in accordance with FAR 15.404-1(c)(iv).

(5) All modifications must include language similar to either an adjustment of the contract completion date or to: “Extension of contract completion date is not required by reason of this modification.”

(6) When a liquidated damages clause is included in the contract, a unilateral modification shall be prepared to adjust the contract price for any liquidated damages assessed against the contractor prior to final payment and contract close-out.

(b) Service contracts.

1) If labor requirements subject to Service Contract Labor Standards (the Service Contract Act of 1965) are affected by out-of-scope work, a new Service Contract Labor Standards wage determination must be requested and made a part of the modification.

2) A unilateral modification shall be issued to adjust the contract price to reflect deductions taken for unperformed work.

Subpart M843.2—Change Orders

M843.201-70 Policy.

(a) It is VA policy to negotiate in advance the cost and/or time associated with all contract changes except in unusual circumstances where it is not possible as a consequence of the character of the changed work. The contracting officer is generally in a better negotiating position when the in-scope change is negotiated and the contract modified prior to the work starting.

(b) When the government and contractor cannot reach agreement on the cost and time associated with changed or additional work, an unpriced change order shall be issued to direct the contractor to proceed with the work despite the absence of an agreement on appropriate compensation. In such circumstances, the unpriced change order shall contain compensation, both in terms of time and money to the contract, in amounts or durations thought to be reasonable by the contracting officer in accordance with 843.2. Further, these amounts or durations shall be broken down in sufficient detail to clearly document the basis for the contracting officer’s determination of what was
reasonable compensation should the contractor seek additional compensation via the disputes provision of the contract and prevail in a contracting officer’s final decision.

**M843.202-70 VA authority to issue change orders.**

Within the VA, Senior/Resident Engineers may be authorized to perform and execute limited duties and responsibilities for construction contracts when VAAR clause 852.242-70 and its Alternate I have been included in the contract terms and conditions. However, Alternate I shall not be included when the Senior/Resident Engineer has been assigned duties as the Contracting Officer Representative.

**M843.204-70 Definitization of unpriced change orders.**

(b) *Price ceiling.* The unpriced change order (UCO) will include a cost/price ceiling not to exceed 50 percent of the not-to-exceed price before definitization or 75 percent as established by VAAR 843.204-70-4. The rationale for the not-to-exceed price will be documented and retained in the Electronic Contract Management System. Examples of such supporting rationale include—

1. The Independent Government Cost Estimate;
2. Price analysis based on prior buys; and
3. The contractor’s proposal.

(g) *Allowable profit.* To improve the documentation and provide guidance on determining the profit for UCOs with substantial incurred cost, contracting officers shall follow the mandatory instructions for [weighted guidelines method](#) analysis.

**M843.204-71 Unpriced contract modification language.**

(a) When an equitable adjustment in the contract price or delivery terms or both cannot be agreed upon in advance, an unpriced modification may be issued. Include in the unpriced change order, wording similar to the following:

“You are hereby directed to perform the work in the attached [insert either statement of work or statement of objectives] date [insert date]. The price of the work shall be performed with the “Not-to-Exceed (NTE) amount of $[insert dollar amount].

**DEFINITIZATION SCHEDULE**

As agreed to between the government and the contractor, the following definitization schedule is hereby established:

Proposal Due Date:
Negotiation Date:
Definitization Target Date:

The final change in the contract amount and time will be determined pursuant to negotiations and incorporated upon definitization."

(b) Upon successful negotiation of an equitable adjustment resulting from an unpriced change order, the contracting officer shall issue a supplemental agreement. Include in the modification wording similar to the following:

“This modification hereby definitizes Modification [insert number and, if applicable, task order number] dated [insert date] issued with a Not-to-Exceed (NTE) amount of $[insert dollars].

As negotiated on [insert date] and in accordance with the attached [insert statement of work or statement of objectives] dated [insert date], the parties hereby mutually agree to the following adjustments in the [insert either “contract” or “task order”] price [“and time”, insert if applicable] as complete and equitable adjustment.

<table>
<thead>
<tr>
<th>CLIN</th>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
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<tr>
<td>0001</td>
<td>[Add description of added work]</td>
<td>$[insert dollar amount]</td>
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<td></td>
<td>Less amount awarded on unpriced change order</td>
<td>$[insert dollar amount]</td>
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[insert Mod # and, if applicable, “Task Order No.”]

**TOTAL AWARDED THIS ACTION**

$[insert balance due]

As a result of the above, the total amount of the [insert either “contract” or “task order”] is changed from $[insert total value before this change] to $[insert total value before this change plus the amount funded in this change], a [insert either “increase” or “decrease”] of $[insert the difference between the values]. [If applicable, add “The contract completion date is changed from [insert date] to [insert date]]. All other terms remain the same.

**CONTRACTOR’S STATEMENT OF RELEASE**

In consideration of the modification(s) agreed to herein as complete and equitable adjustment for the Contractor’s [describe ________] “proposal(s) for adjustment”, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the “proposal(s) for adjustment” [except for ______]."
(c) If the contractor fails to submit a proposal in accordance with the definitization schedule, the contracting officer shall either issue a settlement by determination agreement or obtain a waiver from the HCA to extend the schedule.

Subpart M843.70—VA Modification Procedures

M843.7000 Special procedures for price negotiation in construction contract modifications.

(a) In view of the erratic and often unpredictable nature of overhead rates in the construction industry, a standard or flat rate should not be used. An exception is a situation in which dollar value of the work is too low (typically less than $500,000) to warrant the preparation of an itemized estimate of job overhead costs. In such cases, the following “Alternate” method recognized by the construction industry may be used:

(1) 10% for field overhead (FOH) on prime contractor’s work (direct cost of modification x 10% = FO cost for modification)

(2) 3% for home office overhead (HOOH) on prime contractor’s work (direct cost of modification + FOH cost for modification) x 3% = HOOH cost for modification

(3) 5% for prime contractor’s overhead on subcontracted work. Contracting officers are cautioned to use judgement in extreme situations where such compensation may be out of proportion to the contractor’s actual overhead costs. An example of this would be the purchase and installation of a very expensive piece of equipment where the installation is relatively simple and the application of standard percentages would over compensate the contractor.

(b) FAR 15.404-4(b)(1)(i) requires agencies to use a structured approach for determining profit or fee in acquisitions that require cost analysis. M815.404-4 encourages VA contracting officers to use the DoD Weighted Guidelines tool. Contract modifications for the same type and mix of work as the basic contract and of relatively small dollar value compared to the total contract value, may be negotiated using the basic contract profit/fee rate.

(c) Contract modification negotiations shall include all associated time extensions. Contractor proposals shall include all costs and time associated with the change. When agreement on time is at an impasse, the contracting officer shall make a determination of reasonable adjustment based on the government estimate and include a time extension in the modification. However, delays due to weather do not necessarily result in contractor entitlement to an excusable non-compensable time extension under the Default clause. Weather related time extensions are only awarded if the actual weather is in fact unusually severe (i.e., weather more severe than anticipated for the season or location involved) or adverse (i.e., atmospheric conditions at a definite time and place that are unfavorable to construction activities) and impacts the progress of activities on the longest path. It is irrelevant if the contractor is ahead of schedule or behind schedule.
when unusually severe weather delays are experienced. If future weather dependent activities on the longest path are pushed into months with more anticipated adverse weather, consideration should be given to granting additional time. Conversely, if they are pushed into months with less anticipated adverse weather, consideration should be given to granting less time. See the Office of Construction and Facilities Management's General Time Extension Analysis Procedures – Contract Change Time Delay to the Project Schedule - for time extension procedures.
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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M844—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

Subpart M844.3—Contractors’ Purchasing Systems Reviews

M844.302 Requirements.
M844.370 Types of contractor purchasing system reviews.
M844.370-1 Initial/comprehensive review.
M844.370-2 Special review.
M844.370-3 Follow-up review.
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M844.302 Requirements.

(c) In advance of contractor purchasing system reviews, contracting officers may inform subject contractors of the elements set forth in M844.370-1.

M844.370 Types of contractor purchasing system reviews.

M844.370-1 Initial/comprehensive review.

An initial review is a complete, first-time analysis of a contractor's purchasing system. A comprehensive review is performed if a contractor has an approved purchasing system. Both the initial and comprehensive contractor purchasing system review (CPSR) evaluates the contractor’s compliance with the same elements. At a minimum, the contractor’s purchasing system shall:

(a) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Department of Veterans Affairs Acquisition Regulation (VAAR);

(b) Ensure that all applicable purchase orders and subcontracts contain all flow down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(c) Maintain an organization plan that establishes clear lines of authority and responsibility;

(d) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the purchase order and subcontract files which are subject to Government review;

(e) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(f) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(g) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
(h) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

(i) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(j) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier purchase orders or quote to ensure fair and reasonable subcontract prices;

(k) Document negotiations in accordance with FAR 15.406-3;

(l) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

(m) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

(n) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(o) Document and justify reasons for subcontract changes that affect cost or price;

(p) Notify the Government of the award of all subcontracts that contain flow down clauses allowing for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(q) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;

(r) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(s) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow down clauses, as required by the FAR and VAAR, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;

(t) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
(u) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

(v) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(w) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(x) Establish and maintain procedures to timely notify the contracting officer, in writing, if—

(1) The contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

M844.370-2 Special review.

A special review is an investigation of specific weaknesses identified in any contractor’s purchasing system, using the same techniques followed in performing an initial or comprehensive review. The contracting officer may initiate a special review of any contractor’s purchasing system in connection with weaknesses revealed as a result of:

(a) The initial or comprehensive review, or continuing in-depth surveillance;

(b) The review of subcontracts submitted under the notification and consent to subcontract requirement of contract clauses;

(c) Major changes in the contractor’s purchasing policies, procedures, or key personnel;

(d) Changes in plant workload or type or work;

(e) Information that changes the level of risk to the Government; or
(f) Award of a high dollar value contract to a vendor that has had no review of their system.

M844.370-3 Follow-up review.

A follow-up review is performed when a contractor’s purchasing system is disapproved by the contracting officer. The purpose of the follow-up review is to determine whether a contractor has effectively implemented a corrective action plan (CAP) deemed adequate by the contracting officer and corrected the deficiencies revealed by any purchasing system review. The same techniques used during an initial or comprehensive review are employed in the follow-up review. If the status of a contractor’s purchasing system is disapproved, a follow-up review shall be made as soon as:

(a) Notification has been received from the contractor that all deficiencies have been corrected. The notification shall consist of a letter from the contractor giving the date of completion of the CAP; and

(b) Sufficient time has passed to provide a suitable sample to be reviewed. Sufficient time is approximately 90 days after all elements of the CAP have been implemented. A follow-up review is confined to the areas found deficient in the previous CPSR. A follow-up report will only be completed if the previous CPSR was completed within the past 18 months. If it has been more than 18 months since the previous CPSR, then a full comprehensive review will be done on the contractor.
SUBCHAPTER G—CONTRACT MANAGEMENT

PART M845—GOVERNMENT PROPERTY

Sec.

Subpart M845.1—General

M845.101 Definitions.
M845.102 Policy.
M845.102-70 Accountability of Government property.
M845.103 General.
M845.103-70 Property administrator.
M845.105 Contractors’ property management system compliance.
M845.106-70 Transferring Government property accountability.

Subpart M845.4—Title to Government Property

M845.402 Title to contractor-acquired property.
M845.402-70 Policy.
M845.101 Definitions.

*Significant deficiency* means a shortcoming in a contractor’s property management system that materially affects the ability of VA officials to rely upon information produced by the system that is needed for management purposes.

M845.102 Policy.

(b) Prior to furnishing Government property to the contractor, the contracting officer shall ensure that each of the requirements of FAR 45.102 are addressed as follows, and documented in the eCMS contract file—

(1) In the Government’s best interest. Discussion of the need for Government property should be specific, factual, and where necessary, address actual or projected dollars and percentages. The discussion should address the following factors, as appropriate:

   (i) Economy—Furnishing Government property is the lowest evaluated cost or price alternative.

   (ii) Standardization—There is a critical need for precise replication.

   (iii) Security—Government property is needed due to security issues/concerns.

   (iv) Need to expedite production—Government property is crucial to achieving timely or accelerated delivery of a supply item or service, including construction.

   (v) Scarcity—The Government can obtain scarce items, or is the only source of property necessary for successful execution of a contract.

   (vi) Contract type—Government property will enable the Government to obtain a more favorable contract type.

(2) Overall benefit. Demonstrate that the overall benefit to the acquisition significantly outweighs the increased cost of administration, including property disposal.

   (i) Property in the hands of contractors drives program costs. Therefore, in order to make the case that providing Government property to the contractor is
worthwhile, the associated costs must be considered and the business decision justified. The costs of Government property removal and disposal, including disposal of environmentally-regulated property, must be included.

(ii) Costs must be either less than what the contractor might otherwise incur, or the demonstrated benefit to the Government must outweigh these additional contract costs.

(3) Government assumption of risk. Demonstrate that providing the property does not substantially increase the Government’s risk.

(i) Risk must be discussed and documented. A risk analysis is warranted to demonstrate that the Government is not substantially increasing its risk. For example, when furnishing Government property, the Government is ordinarily responsible for suitability of use, timely delivery, and replacement of defective Government property.

(ii) Other risks may need to be considered, discussed, and documented.

(4) Government requirements cannot otherwise be met. Document why the furnishing of Government property is critical and significant to meeting the acquisition’s objectives.

M845.102-70 Accountability of Government property.

Government property, as defined at FAR 45.101, must be contractually accountable to a single contract and only one contract at a time. This requirement applies to both Government-furnished property and contractor-acquired property. Although accountable to only one contract at a time, contract terms and conditions may allow Government property to be used on other contracts (see FAR 52.245-9, Use and Charges).

M845.103 General.

M845.103-70 Property administrator.

The property administrator function is generally delegated by the contracting officer to the contracting officer representative.

M845.103-71 Furnishing Government property to contractors.

The requiring office (project or program manager, or purchase request generator), as part of its responsibility for acquisition planning (FAR part 7, Acquisition Planning), is the decision point as to whether or not to furnish property to contractors. The basis for any decision to provide Government property shall be documented by the requiring office and provided to the contracting officer. Such documentation is not required when
contractors are furnished property for repair, maintenance, modification, or overhaul under a contract.

M845.105 Contractors’ property management system compliance.

(b) Disposition of findings.

(1) Initial determination:

   (i) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

   (ii) Evaluation of contractor’s response. Within 30 days of receiving the contractor’s response, the contracting officer, in consultation with the property administrator, should evaluate the contractor’s response and make a final determination.

(2) Final determination:

   (i) Monitoring contractor's corrective action. The contracting officer and property administrator shall monitor the contractor's progress in correcting deficiencies.

   (ii) Correction of significant deficiencies.

      (A) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the property administrator to review the correction to determine if the deficiencies have been resolved.

      (B) The contracting officer shall determine if the contractor has corrected the deficiencies.

      (C) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the property administrator.

(c) If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are—

(1) Withdrawing or withholding approval of the system;  

(2) Bringing the issue to the attention of higher level management;
(3) Considering the property control deficiencies in determining contractor’s responsibility (see FAR 9.104-1(e)); and

(4) Documenting the deficiencies in the Contractor Performance Assessment Reporting System (CPARS).

M845.106-70 Transferring Government property accountability.

(a) Use only the Standard Form 30 to execute transfers of Government property accountability between existing contracts. No other forms or documents are authorized for the transfer of Government property accountability from one contract to another.

(b) Modifications for the transfer of Government property accountability shall incorporate FAR clause 52.245-1, Government Property, if the gaining contract lacks this clause.

Subpart M845.4—Title to Government Property

M845.402 Title to contractor-acquired property.

M845.402-70 Policy.

Oversight and visibility of contractor acquired property should be limited to reviews and audits of contractor accounting and property management systems. Ad-hoc contractor generated reports of contractor-acquired property used by government personnel for property accountability can result in duplicate accountability records, inefficient operations, and increased program costs, and are discouraged.
Subpart M846.1—General

M846.101-70 Definitions.
M846.102 Policy.

Subpart M846.2—Contract Quality Requirements

M846.202-470 VA higher-level contract quality requirements.

Subpart M846.4—Government Contract Quality Assurance

M846.401 General.
M846.401-70 VA Quality Assurance Surveillance Plan (QASP).
M846.401-71 Health Care Resources (HCR) quality assurance and performance monitoring policy.
M846.407-70 Nonconforming supplies or services—no other contractual remedies.
M846.407-71 Recall of defective medical devices and medical products, including food and food products.

Subpart M846.6—Material Inspection and Receiving Reports

M846.601-70 Subsistence and supplies receiving.

Subpart M846.7—Warranties

M846.702-70 Guarantee period of services and specifications.
M846.703 Criteria for use of warranties.
M846.704 Authority for use of warranties.
M846.101-70 Definitions.

As used in this part—

At no additional cost to the Government means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see FAR 46.707), or at no increase in fee under cost-reimbursement contracts.

Defect means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Subsistence means food products, purchased from approved and/or mandatory sources, for the provision of meals to the Veteran beneficiary.

M846.102 Policy.

This part sets forth the VA’s requirements for performance of Government contract quality assurance functions as required by FAR part 46, FAR part 12, and VAAR part 846. The purpose of Government contract quality assurance is to ensure that supplies and services acquired under VA contracts conform to contract requirements.

Subpart M846.2—Contract Quality Requirements

M846.202-470 VA higher-level contract quality requirements.

(a) Nutrition and Food Services (NFS) is responsible for the identification and purchasing of all subsistence items and food service supplies needed for patient and resident food services. All products are to be purchased in accordance with the Subsistence Prime Vendor (SPV) contract, and other authorized procurement sources, when appropriate. (See VHA Handbook 1109.04, Food Services Management Program, dated October 11, 2013 and VHA Directive 1761(1), Supply Chain Program Management, Appendix A, paragraph 4, Requirements for Nutrition and Food Service Exception.)

(b) In accordance with the VA Procurement and Logistics Office (10NA2) and VHA Directive 1761(1), Supply Chain Program Management, Appendix A, paragraph 4, Requirements for Nutrition and Food Service Exception, subsistence items are determined and fulfilled through the proprietary software provided by the Subsistence Prime Vendor Contractor used by all VA medical facilities.
(c) To promote and achieve cost effectiveness in food and food service supply procurement, national subsistence and/or supply standardization agreements have been established for selected product categories. Examples of these categories are: frozen entrees, canned soups, cookies, crackers, meats, coffee, ware-washing chemicals, paper and plastic products, etc. Any facility wanting to deviate from the standardized agreements must submit a waiver to the VHA Logistics Office for authorization to purchase from a non-mandatory source.

(d) Any new food and/or convenience products, not covered under the standardized agreements, need to be evaluated prior to being added to the patient menu. Products need to be evaluated for quality, variety, flavor or taste, nutritional content, and cost. A form, such as VA Form 10-7983, Sensory Evaluation of Convenience Foods (see http://vaww.va.gov/vaforms/medical/pdf/10-7983-fill.pdf), may be used as an evaluation tool to screen foods for acceptability. Whenever possible, patient and/or resident participation in sensory evaluation of products needs to be utilized. Increased portion cost needs to be justified by increased quality, decreased waste, and reduced labor expenditure. A nutritional analysis must be provided from the vendor on convenience products and reviewed for menu or dietary compliance. (e) Quality standards consists of--

1. All juices and dairy products, regardless of packaging, including apple and orange juice, apple cider, milk, ice cream, processed cheese (American cheese), and liquid, frozen, and dry eggs and egg products need to be pasteurized.

2. Only pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs, or egg products are to be used.

3. Fluid and dry milk, and milk products, including those used in cooking, must comply with Grade A pasteurized standards and be procured pasteurized. Milk must be procured in machine-filled and sealed containers of appropriate capacity for daily needs, but should not exceed 19 liter (5 gallon) containers.

4. Meat, poultry, and seafood must be purchased in accordance with the facility Hazard Analysis Critical Control Point (HACCP) plan which is a systematic approach to the identification, evaluation, and control of food safety hazards. Seafood and poultry need to be purchased frozen. Meat (beef and pork) may be purchased chilled, within the proper HACCP temperature ranges, and securely sealed to prevent contamination.

5. Commercially-produced bread rolls, and baked goods from local bakeries are purchased in accordance with required specifications. Bread used for tray service is commercially wrapped or protected from contamination and dehydration through the use of food grade plastic bags or other protective covering.

6. Ice cream, frozen yogurt, sherbet and non-frozen yogurt are purchased in accordance with required specifications.
(7) Food purchased in hermetically-sealed containers must be obtained from a food processing plant that meets local, state and federal regulations.

Subpart M846.4—Government Contract Quality Assurance

M846.401 General.

M846.401-70 VA Quality Assurance Surveillance Plan (QASP).

(a) The requirement for a quality assurance surveillance plan (QASP) shall be addressed and documented in the contract file for each contract. Those awarded at or below the simplified acquisition threshold do not require a QASP.

(1) For contracts for services, the contracting officer should prepare a QASP to facilitate assessment of contractor performance.

(2) FAR 46.401(a) provides the components that should be contained in a QASP. Numerous QASP templates are available to facilitate the development of a QASP. Samples of some QASP templates are:

- QASP Template
- E-Quality Assurance Surveillance Plan
- Quality Assurance Surveillance Plan
- Steps to Performance-Based Acquisition (SPBA)

(b) The QASP shall be entered into the contract file.

M846.401-71 Health Care Resources (HCR) quality assurance and performance monitoring policy.

(a) All care provided under a HCR contracts must meet VA’s quality standards of care, whether the care is provided in a VA facility or in the sharing partner’s facility (VA Directive 1663, Health Care Resources Contracting –Buying, Title 38 U.S.C. 8153, May 10, 2018).

(b) When awarding and administering contracts for health care resources, contracting officers shall adhere to the guidance found in VA Directive 1663, Health Care Resources Contracting–Buying Title 38 U.S.C. 8153, dated May 10, 2018, and the Veterans Health Administration Procurement Manual, where applicable.

(c) Contracting officers shall—

(1) Ensure appropriate quality assurance standards are included in all HCR solicitations and that they contain a detailed description of the monitoring procedures used by the VA to validate contract compliance. These procedures must be able to demonstrate through time and attendance logs, operating room records, minutes of
meetings or other appropriate electronic records, that VA has received the required contract services.

(2) Ensure that performance under a sharing agreement is monitored;

(3) Appoint a contracting officer representative (COR) for each HCR contract to monitor compliance with the terms of the contract.

(4) Include the title of the VA official(s) to be designated as the Contracting Officer’s Representative (COR).

(4) Prior to the exercise of any option or option year, require the COR to provide the annual summary evaluation of contractor performance to the contracting officer for review and consideration prior to the actual exercise of any option.

(d) The COR shall—

(1) Immediately notify and forward all monitoring procedures detailing any incidents of contractor noncompliance to the contracting officer; and

(2) Annually forward the summary evaluation of the contractor performance to the contracting officer prior to the contracting officer exercising any option or option years.

M846.407-70 Nonconforming supplies or services—no other contractual remedies.

In addition to FAR 46.407(f), if nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer shall—

(a) Notify the contractor in writing of the nonconforming material or service;

(b) Request that the contractor repair or replace the material, or per the service, at no cost to the Government; and

(c) May accept consideration of a refund if offered.

M846.407-71 Recall of defective medical devices and medical products, including food and food products.

(a) The Veterans Health Administration (VHA) Directive 1068, Recall of Defective Medical Devices and Medical Products, Including Food and Food Products, dated July 22, 2014, establishes policy for recalls involving medical devices, medical products, foods and food products.

(1) All product recalls received by the SPV contractor from manufacturers,
United States Department of Agriculture (USDA), or the FDA that involve products delivered to a VA medical facility, must be communicated to the involved medical facilities within 24 hours of notification receipt from the source. The recalled items must be handled according to the guidelines provided by the SPV contractor. If specific procedures are not indicated, segregate and mark the product by indicating it should not be used, and return identified products (or destroy, if designated) as soon as possible to the SPV contractor for proper credit or replacement. Foods to be disposed of because of a FDA or Food Safety and Inspection Service recall will be disposed of in accordance with FDA and Centers for Disease Control and Prevention (CDC) guidelines. Any product that is on a recall list should be disposed of in a safe manner to prevent infections in humans or animals. (FDA recall Web site is located at: http://www.fda.gov/Safety/Recalls/default.htm. The USDA recall Web site is located at: http://www.fsis.usda.gov/Home/index.asp). Food recalls received from the National Center for Patient Safety (NCPS) will be responded to per VISN policy.

(2) All contracts administered by either the National Acquisition Center (NAC) or Strategic Acquisition Center (SAC) (e.g., national, Blanket Purchase Agreements, Federal Supply Schedules) have standardized language in purchase orders and contracts requiring vendors to notify the appropriate NAC or SAC contracting officers and VA’s Product Recall Office (PRO) of any actions required by the field regarding their products (e.g., recalls - voluntary or otherwise, manufacturer field actions) or other product safety issues. Additionally, the PRO is to be contacted within 1 business day following receipt of product safety or other relevant information from the vendor (see VHA Directive 1068).

(b) The Network Contract Office (NCO) Contracting Officer is responsible for—

(1) Ensuring that all contracts and purchase orders administered by the VISN and its medical facility(ies) include standard language requiring vendors to notify the Contracting Officer, the facility(ies), and the PRO of any actions required on medical devices and medical products related to recalls (voluntary or otherwise), manufacturer field actions, or other product safety issues. Additionally, the PRO is to be contacted within 1 business day following receipt of product safety or other relevant information from the vendor; and

(2) Notifying the Facility Recall Coordinator (FRC) of recalls or important product safety issues received from facility-initiated contract vendors.

Subpart M846.6—Material Inspection and Receiving Reports

M846.601-70 Subsistence and supplies receiving.

The contracting officer should ensure subsistence items are received and inspected in accordance with the terms and conditions of the SPV contract and local Hazard Analysis Critical Control Point (HACCP) guidelines.
Subpart M846.7—Warranties

M846.702-70 Guarantee period of services and specifications.

(a) This section applies to the use of guarantee period services specifications in construction contracts that include contractor-furnished and contractor-installed equipment. Certain complex, contractor-installed, high-dollar value, traditionally troublesome equipment, such as elevators and communication systems, do not always function as expected after the initial guaranty has expired; therefore, guarantee period services specifications were developed to assist contracting officers in the administration of construction contracts with new long-term equipment guaranties.

(b) Guarantee period services are appropriate when—

1. There are critical maintenance activities that are clearly beyond the skills and training of current Government personnel; and

2. When it is evident that the service would substantially extend the life expectancy of the equipment.

(c) Guarantee period services are not appropriate for the following situations:

1. Augment Government maintenance work forces or in situations where Government personnel can obtain adequate maintenance training through operating manuals and orientation.

2. Minor extensions or expansions of existing systems.

(d) Due to the novel nature of guarantee period services and specifications, the contracting officer shall—

1. Inform prospective bidders, which may be accomplished in blocks 10 and 11 of SF 1442 (Solicitation, Offer and Award (Construction, Alternation or Repair)) of the contract time frames, both for the construction portion and for the guarantee period services portion of the contract;

2. Obtain legal and technical review, regardless of dollar value, prior to the issuance of a solicitation;

3. Include all applicable FAR and VAAR parts such as FAR/VAAR part 32/832, Contract Financing; part 36/836; Construction and Architect-Engineer Contracts; part 46/846, Quality Assurance; parts 37/837, Service Contracting Clauses and applicable wage determination requirements; FAR clause 52.228-15, Performance and Payment Bonds—Construction; and applicable wage determination in all solicitations since they apply to the guarantee period services portion of the contract;

4. Ensure the appropriate VAAR payment clauses, e.g., 852.232-70, Payments Under Fixed-Price Construction Contracts (Without NAS-CPM) (Alternate I),
and 852.232-71, Payments Under Fixed-Price Construction Contracts (Including NAS-CPM) (Alternate I), are included in all solicitations and contracts that contain guarantee period services provisions as delineated at 832.111-70, VA contract clauses for non-commercial purchases;

(5) Establish separate contract line item numbers (CLINS) to reflect the various tasks to be performed;

(6) Ensure the solicitation includes a specific separate guarantee requirement for the covered equipment that extends to the full period of the guarantee period services;

(7) Ensure that the guarantee services and specifications are included in the original contract scope since existing contracts cannot not be modified to include these specifications because the determination required by VAAR 846.702-70(c) cannot be made after contract award;

(8) Ensure the solicitation states that Guarantee Period Services are not bid alternates; and

(9) The contracting officer may determine, when in the best interest of VA, that guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and to ensure that the equipment performs as guaranteed.

M846.703 Criteria for use of warranties.

The contracting officer must ensure that the procurement request initiator prepares a written recommendation that can be evaluated for those purchases deemed appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply.

M846.704 Authority for use of warranties.

As prescribed by FAR 46.704, the contracting officer is authorized to approve the use of warranties.
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Subpart M847.1—General

M847.105 Transportation assistance.

Subpart M847.3—Transportation in Supply Contracts

M847.303 Standard delivery terms and contract clauses

M847.303-1 F.o.b. origin.

M847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

M847.306 Transportation factors in the evaluation of offers.

M847.306-70 Utilization of environmental transportation evaluation factors.

M847.306-71 Mandatory environmental transportation factors.

M847.306-72 Optional environmental transportation factors.
M847.105 Transportation assistance

Contracting officers shall contact their Traffic Manager, or COR, for assistance and expertise in transportation management, and transportation related issues.

Subpart M847.3—Transportation in Supply Contracts

M847.303 Standard delivery terms and contract clauses.

M847.303-1 F.o.b. origin.

Shipments falling within this category must be shipped on a bill of lading, except as provided in 41 CFR 102-118.40 (i.e. where government payment mechanisms are not available or acceptable). Contracting officers must comply with 41 CFR Parts 102-117 and 102-118.

M847.303-70 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 any of the following circumstances:

(1) When it is determined that an f.o.b. origin purchase or delivery order will have transportation charges that do not exceed $250 and the occasional exception does not exceed that amount by more than $50.

(2) Single parcel shipments via express, courier, small package, or similar carriers, regardless of shipping cost, if the shipped parcel 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, must identify shipping instructions. When VA Form 90-2138 is not used, the contracting officer shall, via contract terms and conditions, ensure that the vendor do the following:

(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
the lowest applicable transportation charge. Follow package specifications found in the National Motor Freight Classification 100 Series.

(2) Add transportation charges as a separate item on the invoice. The invoice must include the following certification: “The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request.”

(3) 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) Not prepay transportation charges on the order if such charges are expected to exceed $250. Ship collect and annotate the commercial bill of lading, “To be converted to VA Commercial Bill of Lading.” Contact the VA Traffic Manager for routing instructions and freight estimate.

(c) Each contracting officer is responsible for:

(1) Obtaining the most accurate estimate possible of transportation charges.

(2) Using 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, a shipment must be insured or the value declared, the contracting officer will specifically instruct the vendor to do so on the order when a written order is used. If the order is oral, the vendor must annotate all copies of the purchase request to show that the insurance/declared value was specifically requested.

M847.306 Transportation factors in the evaluation of offers.

Contracting officers shall comply with VAAR 847.306-70, Records of claims, for all transportation contracts.

M847.306-70 Utilization of environmental transportation evaluation factors.

(a) There are many opportunities to consider environmental criteria in evaluation of offers. A Pass/Fail approach may be appropriate for establishing basic green product requirements, or when market research shows that other sustainable practices are common in the commercial marketplace (i.e. specify minimum recycled content requirements for all supplied packaging materials – an offeror can either meet this requirement (pass) or it cannot (fail), or use of SmartWay participation on a pass/fail basis if market research indicates potential offerors can meet the requirement.

(b) If using a best value tradeoff approach, weighing a vendor’s ability to offer desirable sustainable practices above and beyond minimum contract requirements in
relation to other factors, such as price, may be desirable. The following are examples of using these evaluation criteria:

(1) Technical Approach and/or Sustainability Plan – Evaluate the contractor’s technical approach and plans to implement sustainable practices. Require contractors to detail how they will reduce fuel use and emissions of pollutants (including GHGs), increase use of alternative vehicles and renewable fuels, minimize packaging waste, ensure proper disposal of waste materials, and report on their progress.

(2) Past Performance – Evaluate how the contractor has performed similar services, including their recorded and published emissions metrics and the types of fuels, vehicles, and efficiency practices used.

(3) Life cycle costs for the project, not just the price offered (i.e. specifying take-back of packaging may add cost to a contract, but may save disposal and labor costs).

**M847.306-71 Mandatory environmental transportation factors.**

In accordance with FAR Subpart 23.1 and Executive Order 13693, contracting officers shall include evaluation factors for transportation contracts to ensure contractors use or supply products covered by the following environmental programs, when applicable:

(a) SmartWay - Includes trucks, rail, multi-modal, and other freight carriers.

(b) BioPreferred - Includes thermal shipping containers and packing and insulating materials.

(c) Comprehensive Procurement Guidelines (CPG) - Transportation and vehicular products, pallets, manual-grade strapping, industrial drums, various paperboard and packaging products, and other products as applicable. CPG guidelines can be found at the following link: [https://www.epa.gov/smm/product-resource-guides-comprehensive-procurement-guideline-cpg-program](https://www.epa.gov/smm/product-resource-guides-comprehensive-procurement-guideline-cpg-program)

**M847.306-72 Optional environmental transportation factors.**

Consider the following optional environmental factors when defining performance requirements and evaluation criteria related to transportation, especially as they relate to (1) managing transportation impacts; (2) directly contracted transportation; and (3) inbound goods transportation:

(a) Preferences for contractors to participate in the EPA SmartWay Transport Partnership. SmartWay is a voluntary public-private partnership that aims to reduce the environmental impacts and costs of transportation. Transportation companies that participate in SmartWay use tools developed by EPA to monitor and share emissions data for customer use. SmartWay partners also get technical assistance to green their networks.
(b) Preferences for contractors who will report on the carbon emissions associated with shipping requirements, either directly or through SmartWay.

(c) Preferences for contractors who will purchase high-quality carbon offsets to further reduce the environmental impact of shipping goods to VA. Some transportation vendors package carbon offsets with services to create “carbon-neutral” shipping options, which can be included in the cost proposal and evaluated as part of the overall solicitation.