VA Acquisition Update

August 29, 2017 **Number 2008-03**

1. **Material Transmitted:** The attached pages contain interim revisions issued via approved Class Deviations to the Department of Veterans Affairs Acquisition Regulation (VAAR) Parts 801, 802, 804, 806, 808, 809, 810, 812, 813, 815, 816, 817, 819, 832, 842, 852, 853, and 873. The inserts also incorporate revised text at VAAR 819.307 from a final rule previously published in the Federal Register.

2. **Summary of Changes:** This VA Acquisition Update provides:

a. Revisions to the VAAR that were published via a final rule in the Federal Register at 80 FR 12564, March 10, 2015, which adopted as a final rule, without change, the interim final rule published in the Federal Register at 78 FR 59865, dated September 30, 2013. The final rule revised the text at VAAR 819.307, SDVOSB/VOSB Small Business Status Protests, as reflected in the electronic Code of Federal Regulations.

b. Text revisions based on active VAAR Class Deviations issued from September 9, 2010 through June 30, 2017 and still effective, until rescinded or incorporated into the official eCFR revised VAAR. They are listed and summarized below:

2008 VAAR Active Class Deviations (CD) through 30 June 2017			
CD Title	**Effective Date**	**VAAR Parts Affected**	**Summary of Change(s)**
Representatives of Contracting Officers	Oct 20, 2010	801.603-70	This deviation allows COs to issue ordering delegations which grant authority to non-warranted personnel to issue funded delivery orders against VA indefinite delivery vehicles. (Note: *See Nov 19, 2014 Class Deviation that provides additional authority at 801.603-70(b)(5)*.)
DSPE Duties	Apr 16, 2012	801.304	Changes the Deputy Senior Procurement Executive (DSPE) designation from the Associate Deputy Assistant Secretary (ADAS) for Acquisition to the ADAS for Procurement Policy, Systems and Oversight. Additionally, the offices and titles for the Chief Acquisition Officer (CAO) and Senior Procurement Executive (SPE) are updated to reflect the current organizational structure.
Indefinite-Quantity Contracts	Oct 11, 2012	816.504 852.216-70	To comply with the FAR requirement that contract clauses prescribed in VAAR 816.504 supplement the FAR to satisfy the specific needs of the VA. Particularly, this deviation is to suspend clause 852.216-70, Estimated Quantities.
Ratification of Unauthorized Commitments	May 3, 2013	801.602-3 (b)(1)-(3)	Changes the ratification authority from the Deputy Assistant Secretary (DAS) for Acquisition and Materiel Management to the Head of Contracting Activities (HCAs); clearly identifies the HCAs as the ratification office for all unauthorized commitments in accordance with FAR 1.602-3(b)(2) and (3); and, rescinds ratification authority from the "chief financial officers of the Administrations".
Representatives of Contracting Officers	Nov 19, 2014	801.603-70	Revises the October 20, 2010 deviation (VAIQ 7003833) to allow Heads of Contracting Activities (HCAs) to designate non-warranted personnel as ordering officers for non-VA contracts where prices are pre-established and no further negotiations are required.
Assignment of Contract Audit Services	Oct 26, 2015 (dtd Sep 29, 2015)	842.102	Authorizes CFM to obtain audit services directly from GSA Schedule 520, Financial and Performance Audits contractors through Fiscal Year 2020.

2008 VAAR Active Class Deviations (CD) through 30 June 2017			
CD Title	**Effective Date**	**VAAR Parts Affected**	**Summary of Change(s)**
Approval Authority from DSPE to HCAs	Dec 15, 2015 (dtd Dec 2, 2015)	832.202-1 832.402	Delegates approval authority from the DSPE to the HCAs or designee for making findings and determinations and approval of contract terms for advance payments.
Language Clarification-Requirements	Dec 15, 2015 (dtd Dec 3, 2015)	806.501	Clarifies language to update title to Advocate for Competition; designates the Deputy Senior Procurement Executive (DSPE) as the Agency Advocate for Competition and also authorizes this authority to other VA procurement officials.
Employee Empowerment Initiative (EEI)	Dec 15, 2015 (dtd Dec 3, 2015)	832.202-1(d) 832.402	Delegates approval authority from the DSPE to the HCAs or designee for making findings and determinations and approval of contract terms for advance payments.
Contracts Regarding Option Year Contracts and Terms Exceeding 5 Yrs	Dec 15, 2015 (dtd Dec 2, 2015)	817.204	Delegates authority to approve periods of service beyond 5 years from the DSPE to the HCAs or designee.
Employee Empowerment Initiative (EE)	Dec 15, 2015 (dtd Dec 2, 2015)	801.602-70 801.602-71 801.602-72	Revises the oversight process establishing a more decentralized, less labor-intensive oversight process.
Implementation of VFCP as a Result of U.S. Supreme Court Decision (VFCP 2016)	Jul 25, 2016* (*Also see March 1, 2017, Attachment 4, Amendment 01 to VAAR 808.002*)	802, 804, 806, 808, 810, 812, 813, 817, 819, 852, 873	Rescinds class deviation—VAAR part 808 dated May 5, 2016 and moves VA mandatory contract vehicles to VAAR 808.004-70 as non-mandatory, while retaining priority over other existing contract vehicles. This class deviation also adds VAAR 808.002, 808.004-70, 808.405-70, 808.405-2 and 808.405-70 to fully implement the Veterans First Contracting Program as it relates to VAAR part 808, Required Sources of Supplies and Services including the Federal Supply Schedules. This deviation is effective until incorporated in the VAAR or otherwise rescinded.
Approval of the Justification	Aug 8, 2016	806.304	Justifications shall be approved in accordance with the approving officials and thresholds specified in FAR 6.304. VAAR 806.304 text is deleted and marked as "Reserved."
Basic Review Requirements	Oct 6, 2016	801.602-71	Corrects the Review Levels and Thresholds contained in the previous deviation released on December 2, 2015.
Responsibilities	Dec 15, 2016	815.303	Delegates to the HCAs the authority to

2008 VAAR Active Class Deviations (CD) through 30 June 2017			
CD Title	**Effective Date**	**VAAR Parts Affected**	**Summary of Change(s)**
			designate an individual other than the contracting officer as the Source Selection Authority (SSA) for a particular acquisition or group of acquisitions.
Nonmanufactur-er Rule Waiver to SBA	Feb 17, 2017	819.102	Adds section VAAR 819.102(f)(4) and (5), which requires the Head of the Contracting Activity (HCA) to approve any request for a Nonmanufacturer Rule waiver prior to submission to the Small Business Administration (SBA) for class waivers or for a specific solicitation; and the use of other than competitive procedures or restricted competition, as defined in 38 U.S.C. 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule.
Implementation of VFCP as a Result of U.S. Supreme Court Decision (Revised) (VFCP FEB 2017)	Mar 1, 2017	808.002	This deviation includes changes to the VAAR to amend the implementation of the Veterans First Contracting Program (VFCP) originally set forth in Attachment 4 to Class Deviation (VFCP 2016), dated July 25, 2016, and revises VAAR 808.002 only, as set forth in Attachment 4, Amendment 01. (All other language contained in the original Class Deviation, VFCP 2016, remains in effect, to include the text set forth in the original Attachment 4 with the exception of the revised VAAR 808.002 issued as a result of this deviation.)
Increased Dollar Threshold to the Simplified Acquisition Threshold for VA Form 10-2421	Mar 31, 2017	813.307 853.213	Increases the dollar threshold to not to exceed the Simplified Acquisition Threshold for use of VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expires March 31, 2018, unless otherwise rescinded.
Review Requirements-OGC	Apr 12, 2017	801.602-75	Updates the review requirements for the Office of General Counsel.
Debarment, Suspension, and Ineligibility	Jun 2, 2017	802.101 809.400	Implements a broader definition of “willful and intentional misrepresentation” of SDVOSB and VOSB status, implements specific processes and criteria pursuant to 38 U.S.C. § 8127(g), and updates VA’s policies and procedures for suspensions and debarments, which includes earlier changes issued via a Class Deviation on Apr 30, 2015 to 802.101 and 809.400. The earlier

2008 VAAR Active Class Deviations (CD) through 30 June 2017			
CD Title	**Effective Date**	**VAAR Parts Affected**	**Summary of Change(s)**
			deviation removed definitions for *D&S Committee* and *Debarring official* and added new definitions for *S&D Committee* and the *Suspending and Debarring Official (SDO) which is continued in the new Jun 2, 2017 deviation*. Also rescinds the Apr 30, 2015 class deviation.

3. **Filing Instructions:**

Remove pages:	Insert Pages:
TOC-1 thru TOC-4	TOC-1 thru TOC-4
801-1 thru 801-40	801-1 thru 801-38
802-1 thru 802-6	802-1 thru 802-6
804-1 thru 804-4	804-1 thru 804-4
806-1 thru 806-6	806-1 thru 806-8
808-1 thru 808-6	808-1 thru 808-10
809-1 thru 809-14	809-1 thru 809-16
810-1 thru 810-4	810-1 thru 810-4
812-1 thru 812-6	812-1 thru 812-6
813-1 thru 813-6	813-1 thru 813-8
815-1 thru 815-8	815-1 thru 815-8
816-1 thru 816-6	816-1 thru 816-6
817-1 thru 817-6	817-1 thru 817-6
819-1 thru 819-22	819-1 thru 819-28
832-1 thru 832-10	832-1 thru 832-10
842-1 thru 842-6	842-1 thru 842-6
852-1 thru 852-57	852-1 thru 852-64
853-1 thru 853-6	853-1 thru 853-6
873-1 thru 873-16	873-1 thru 873-16

Effective date: As depicted in the Summary of Changes table.

TABLE OF CONTENTS

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

SUBCHAPTER A—GENERAL

Part 801 DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION

Part 802 DEFINITIONS OF WORDS AND TERMS

Part 803 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Part 804 ADMINISTRATIVE MATTERS

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

Part 805 PUBLICIZING CONTRACT ACTIONS

Part 806 COMPETITION REQUIREMENTS

Part 807 ACQUISITION PLANNING

Part 808 REQUIRED SOURCES OF SUPPLIES AND SERVICES

Part 809 CONTRACTOR QUALIFICATIONS

Part 810 MARKET RESEARCH

Part 811 DESCRIBING AGENCY NEEDS

Part 812 ACQUISITION OF COMMERCIAL ITEMS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 813 SIMPLIFIED ACQUISITION PROCEDURES

Part 814 SEALED BIDDING

Part 815 CONTRACTING BY NEGOTIATION

Part 816 TYPES OF CONTRACTS

Part 817 SPECIAL CONTRACTING METHODS

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 819 SMALL BUSINESS PROGRAMS

Part 822 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Part 823 [RESERVED]

Part 824 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Part 825 FOREIGN ACQUISITION

Part 826 [RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 828 BONDS AND INSURANCE

Part 829 TAXES

Part 830 [RESERVED]

Part 831 CONTRACT COST PRINCIPLES AND PROCEDURES

Part 832 CONTRACT FINANCING

Part 833 PROTESTS, DISPUTES, AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 836 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 837 SERVICE CONTRACTING

Part 839 [RESERVED]

Part 841 ACQUISITION OF UTILITY SERVICES

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 842 CONTRACT ADMINISTRATION AND AUDIT SERVICES

Part 844 [RESERVED]

Part 846 QUALITY ASSURANCE

Part 847 TRANSPORTATION

Part 849 TERMINATION OF CONTRACTS

SUBCHAPTER H—CLAUSES AND FORMS

Part 852 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Part 853 FORMS

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

Part 870 SPECIAL PROCUREMENT CONTROLS

Part 871 LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

Part 872 [RESERVED]

Part 873 SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

SUBCHAPTER A—GENERAL

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

Sec.
801.000 Scope of part.

Subpart 801.1 – Purpose, Authority, Issuance

801.101 Purpose.
801.103 Authority.
801.104 Applicability.
801.104-70 Exclusions.
801.105 Issuance.
801.105-2 Arrangement of regulations.
801.106 OMB approval under the Paperwork Reduction Act.

Subpart 801.2 – Administration

801.201 Maintenance of the FAR.
801.201-1 The two councils.

Subpart 801.3 – Department Acquisition Regulations

801.304 Department control and compliance procedures.

Subpart 801.4 – Deviations from the FAR or VAAR

801.403 Individual deviations.
801.404 Class deviations.

Subpart 801.6 – Career Development, Contracting Authority, and Responsibilities

801.601 General.
801.602 Contracting officers.
801.602-2 Responsibilities.
801.602-3 Ratification of unauthorized commitments.
801.602-70 General review requirements.
801.602-71 Basic review requirements.
801.602-72 Exceptions and additional review requirements.
801.602-73 Review requirements for scarce medical specialist contracts and contracts for health-care resources.
801.602-74 Review requirements for an interagency agreement.
801.602-75 Review requirements – OGC.
801.602-76 Business clearance review.
801.602-77 Processing solicitations and contract documents for legal or technical review – general.

801.602-78 Processing solicitations and contract documents for legal or technical review – Veterans Health Administration field facilities, Central Office (except Office of Construction and Facilities Management), the National Acquisition Center, and the Denver Acquisition and Logistics Center.
801.602-79 Processing solicitations and contract documents for legal or technical review – Veterans Benefits Administration.
801.602-80 Legal and technical review–Office of Construction and Facilities Management and National Cemetery Administration.
801.602-81 Documents required for business clearance reviews.
801.602-82 Documents to submit for legal or technical review – general.
801.602-83 Documents to submit for legal or technical review – contract modifications.
801.602-84 Documents to submit for business clearance reviews.
801.602-85 Results of review.
801.603 Selection, appointment, and termination of appointment.
801.603-1 General.
801.603-70 Representatives of contracting officers.
801.603-71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.
801.670 Special and limited delegation.
801.670-1 Issuing bills of lading.
801.670-3 Medical, dental, and ancillary service.
801.670-4 National Cemetery Administration.
801.670-5 Letters of agreement.
801.680 Contracting authority of the Inspector General.
801.690 VA's COCP.
801.690-1 Definitions.
801.690-2 General.
801.690-3 Responsibility under the COCP.
801.690-4 Selection.
801.690-5 Requirements for contracting authority.
801.690-6 Appointment.
801.690-7 Termination.
801.690-8 Interim appointment provisions.
801.690-9 Distribution of Certificates of Appointment.
801.695 VA's Appointment of HCAs Program.
801.695-1 Policy.
801.695-2 Procedures for appointment of HCAs.
801.695-3 Authority of the HCA.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

801.000 Scope of part.

This part sets out general Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) policies, including information regarding the maintenance and administration of the VAAR, acquisition policies and practices, and procedures for deviation from the VAAR and the Federal Acquisition Regulation (FAR).

SUBPART 801.1 – PURPOSE, AUTHORITY, ISSUANCE

801.101 Purpose.

(a) VA established the VAAR to codify and publish uniform policies and procedures for VA's acquisition of supplies and services, including construction.

(b) The VAAR implements and supplements the FAR.

801.103 Authority.

The Secretary issues the VAAR under the authority of 40 U.S.C. 121(c), Title 48 of the Code of Federal Regulations (CFR) 1.301 through 1.304, and other authorities as cited.

801.104 Applicability.

(a) Unless otherwise specified in this chapter or excepted by statute (i.e., expenditures of the VA Canteen Service) or other VA regulations, the FAR and VAAR apply to all VA acquisitions (including construction) made with appropriated funds. Supply Fund monies (38 U.S.C. 8121) and General Post Funds (38 U.S.C. 8302) are appropriated funds.

(b) Use the VAAR and the FAR together. The FAR applies to VA acquisitions except as provided in the VAAR.

801.104-70 Exclusions.

The FAR and VAAR do not apply to purchases and contracts that use General Post Funds if using the FAR and the VAAR would infringe upon a donor's right to specify the exact item to be purchased and/or the source of supply (38 U.S.C. 8303).

801.105 Issuance.

801.105-2 Arrangement of regulations.

(a) General. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) Numbering. (1) The numbering system permits the discrete identification of every VAAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs.

(2) Subdivisions below the section or subsection level consist of parenthetical alphanumerics using the following sequence: (a)(1)(i)(A)(1)(i).

(c) References and citations.

(1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this Chapter.

(2) This Chapter may be referred to as the “Department of Veterans Affairs Acquisition Regulation” or the “VAAR”.

(3) Using the VAAR coverage at 809.106-4(c) as a typical illustration, reference to the—

(i) Part would be "VAAR Part 809" outside the VAAR and "Part 809" within the VAAR.

(ii) Subpart would be "VAAR Subpart 809.1" outside the VAAR and "Subpart 809.1" within the VAAR.

(iii) Section would be "VAAR 809.106" outside the VAAR and "809.106" within the VAAR.

(iv) Subsection would be "VAAR 809.106-4" outside the VAAR and "809.106-4" within the VAAR.

(v) Paragraph would be "VAAR 809.106-4(c)" outside the VAAR and "809.106-4(c)” within the VAAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the VAAR shall follow the Federal Register form guides.

801.106 OMB approval under the Paperwork Reduction Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), the Office of Management and Budget (OMB) has approved the reporting or recordkeeping provisions that are included in the VAAR and has given VA the following approval numbers:

48 CFR part or section where identified and described	Current OMB Control Number	48 CFR part or section where identified and described	Current OMB Control Number
809.106-1	2900-0418	852.214-70	2900-0593
809.504(d)	2900-0418	852.228-71	2900-0590
813	2900-0393	852.236-72	2900-0422
832.006-4	2900-0688	852.236-79	2900-0208
832.202-4	2900-0688	852.236-80 (Alt. I)	2900-0422
836.606-71	2900-0208	852.236-82 through 852.236-84	2900-0422
852.207-70	2900-0590	852.236-88	2900-0422
852.209-70	2900-0418	852.236-89	2900-0622
852.211-70	2900-0587	852.236-91	2900-0623
852.211-71	2900-0588	852.237-7	2900-0590
852.211-72	2900-0586	852.270-3	2900-0589
852.211-73	2900-0585		

SUBPART 801.2 – ADMINISTRATION

801.201 Maintenance of the FAR.

801.201-1 The two councils.

Revisions to the FAR are prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council. A designee of the Office of Acquisition and Materiel Management will represent VA on the Civilian Agency Acquisition Council.

SUBPART 801.3 – DEPARTMENT ACQUISITION REGULATIONS

[Deviation per Class Deviation—801.304, Department Control and Compliance Procedures, dated April 16, 2012, changes the Deputy Senior Procurement Executive (DSPE) designation from the Associate Deputy Assistant Secretary (ADAS) for Acquisition to the ADAS for Procurement Policy, Systems and Oversight. Additionally, the offices and titles for the Chief Acquisition Officer (CAO) and Senior Procurement Executive (SPE) are updated to reflect the current organizational structure. Effective until cancelled.]

801.304 Department control and compliance procedures.

The Executive Director, Office of Acquisition, Logistics, and Construction is designated as the Department's Acting Chief Acquisition Officer. The Deputy Assistant Secretary (DAS) for Acquisition and Logistics is designated as the Department's Senior Procurement Executive (SPE). The Associate DAS for Procurement, Policy, Systems, and Oversight is designated as the Deputy Senior Procurement Executive (DSPE). The DSPE is responsible for amending the VAAR for compliance with FAR 1.304.

SUBPART 801.4 – DEVIATIONS FROM THE FAR OR VAAR

801.403 Individual deviations.

(a) Authority to authorize individual deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE.

(b) When a contracting officer considers it necessary to deviate from the policies in the FAR or VAAR, the contracting officer, in accordance with Administration or staff office procedures, must submit a request through the HCA to the DSPE for authority to deviate.

(c) The request to deviate must clearly state the circumstances warranting the deviation and the nature of the deviation.

(d) The DSPE may authorize individual deviations from the FAR and VAAR when an individual deviation is in the best interest of the Government. When the DSPE authorizes a deviation, the contracting officer must file the authorization in the purchase order or contract file.

801.404 Class deviations.

Authority to authorize class deviations from the FAR and VAAR is delegated to the SPE and is further delegated to the DSPE. The DSPE may authorize class deviations from the FAR and VAAR when a class deviation is in the best interest of the Government. The DSPE must comply with the provisions of FAR 1.404 through the SPE.

SUBPART 801.6 – CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

801.601 General.

(a) The HCA or the DSPE, within their authority, may appoint a contracting officer under FAR 1.603 and VA's Contracting Officer Certification Program (COCP).

(b) In addition, the HCA may delegate micro-purchase authority to VA employees under VA's purchase card program.

(c) An individual may not commit the Government for purchases of supplies, equipment, or services unless the individual has received delegated contracting authority as a contracting officer or purchase card holder or as provided in 801.670. Individuals making such commitments or acting beyond the scope of their authority may be held financially liable.

801.602 Contracting officers.

(a) Except as otherwise provided by statute, VA regulations, the VAAR, or the FAR, the authority vested in the Secretary to do the following is delegated to the SPE and is further delegated from the SPE to the DSPE:

(1) Execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds for construction and the acquisition of personal property and services (including architect-engineer services).

(2) Issue bills of lading.

(3) Sell personal property.

(4) Enter into leases, sales agreements, and other transactions.

(5) Prescribe and publish acquisition policies and procedures.

(6) Establish clear lines of contracting authority.

(7) Manage and enhance career development of the procurement work force.

(8) Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where VA should establish and apply Government-wide performance standards, and to participate in developing Government-wide procurement policies, regulations, and standards.

(9) Oversee the competition advocate program.

(b) The DSPE may further delegate authority to execute, award, and administer contracts, purchase orders, and other agreements to other VA officials, such as HCAs and contracting officers, in accordance with the COCP.

801.602-2 Responsibilities.

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

[Deviation per Class Deviation—VAAR 801.602-3, Ratification of Unauthorized Commitments, dated May 3, 2013, to change the ratification authority from the Deputy Assistant Secretary (DAS) for Acquisition and Materiel Management to the Head of Contracting Activities (HCAs); clearly identify the HCAs as the ratification officials for all unauthorized commitments in accordance with FAR 1.602-3(b)(2) and (3); and, rescind ratification authority from the "chief financial officers of the Administrations". Effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

801.602-3 Ratification of unauthorized commitments.

(a) This section applies to unauthorized commitments, including any commitment made by a contracting officer that exceeds that contracting officer's contracting authority and unauthorized commitments made by individuals who lack contracting authority.

(b) Authority to ratify unauthorized commitments is delegated to the Head of the Contracting Activities (HCAs) without authority to redelegate.

(c) The process for contracting officer requests for ratification will be as follows:

(1) The individual who made the unauthorized commitment will furnish the contracting officer with all records and documents concerning the commitment and a complete written statement of facts that includes the following:

(i) Why the procurement office was not used.

(ii) Why the proposed contractor was selected.

(iii) Other sources that were considered.

(iv) A description of work to be performed or products to be furnished.

(v) The estimated or agreed contract price.

(vi) A citation of the appropriation available.

(vii) A statement of whether the contractor has commenced performance.

(viii) The name of the individual responsible for the unauthorized commitment.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (b) of this section with any comments or information that the approving authority should consider in evaluating the request for ratification. If the approving authority determines that a legal review would be desirable, the approving authority will coordinate the request for ratification with OGC or the Regional Counsel, as appropriate.

(3) If the approving authority authorizes the ratification, the approving authority will return the file to the contracting officer for issuance of a purchase order or contract, as appropriate.

[Deviation per Class Deviation—801.602-70, General Review Requirements, 801.602-71, Basic Review Requirements, and 801.602-72, Exceptions and Additional Review Requirements, dated December 2, 2015, revises the oversight process establishing a more decentralized, less labor-intensive oversight process. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

801.602-70 General review requirements.

(a) Contracting officers shall ensure that any document listed under 801.602-71 through 801.602-76 that is submitted for technical or legal review is submitted in accordance with their respective HCA's contract review process.

(b) Under no circumstances shall a CO release a solicitation or sign a contract or modification unless technical and legal reviews have been completed in accordance with the HCA contract review process.

(c) The technical reviewer or at least one technical reviewer (where there is more than one), holds a Federal Acquisition Certification in Contracting commensurate with the procurement value and appropriate expertise in the subject area.

[Deviation per Class Deviation—801.602-71, Basic Review Requirements, dated October 6, 2016, corrects the Review Levels and Thresholds contained in the previous deviation released on December 2, 2015. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

801.602-71 Basic review requirements.

Contracting officers must obtain a technical review and/or legal review in accordance with their respective HCA's contract review process. Table 801.602-71 also sets forth the review levels and approval thresholds required for the contracting actions listed in items (a) through (i).

Table 801.602-71

Action	Review Levels and Thresholds
(a) Interagency Acquisitions (Best Procurement Approach)	- ≤ $5M: CO/Peer Review - $5M-$50M: One level above the CO - >$50M: HCA or Designee
(b) Acquisition Plans	- ≤ $5M: CO/Peer Review - $5M-$100M: One level above the CO - >$100M: HCA or Designee
(c) Stop Work Orders – (Terminations)	- One Level above the CO for all Stop Work Orders - OGC Review

(d) Use of Letter Contracts	- One Level above the CO for all Letter Contracts - OGC Review
(e) BPAs for Supplies under Federal Supply Schedules (FSS) that are not issued by the National Acquisition Center (NAC).	- >$50M: Business Clearance Review - >$50M: OGC Review
(f) Use of Economic Price Adjustment (EPA) Clauses	-HCA or Designee for any use of EPA Clauses
(g) Use of Incentive Contracts	-HCA or Designee for any use of Incentive Contracts
(h) Option Year Contracts Exceeding 5 Years (VAAR 817.204)	-HCA or Designee for any use of Option Year Contracts Exceeding 5 Years
(i) Commercial Interim or Advance Payment Terms (VAAR 832.402)	-HCA or Designee for any use of Commercial Interim or Advance Payment Terms

[Deviation per Class Deviation—801.602-70, General Review Requirements, 801.602-71, Basic Review Requirements, and 801.602-72, Exceptions and Additional Review Requirements, dated December 2, 2015, revises the oversight process establishing a more decentralized, less labor-intensive oversight process. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

801.602-72 Exceptions and additional review requirements. [Reserved]

801.602-73 Review requirements for scarce medical specialist contracts and contracts for health-care resources.

For contracts to be awarded under the authority of either 38 U.S.C. 7409 or 38 U.S.C. 8153, contracting officers must obtain technical and legal reviews from the Medical Sharing Office, OGC, and Acquisition Resources Service staff of the following documents:

(a) Each competitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of $1,500,000 or more, inclusive of options.

(b) Each noncompetitive solicitation, quotation, proposed contract, or agreement with an anticipated contract award value of $500,000 or more, inclusive of options.

801.602-74 Review requirements for an interagency agreement.

Contracting officers or other staff must obtain technical review from Acquisition Operations Service staff of the following documents:

(a) Each proposed VA Central Office interagency agreement with another Federal agency to be awarded under authority of the Economy Act, regardless of dollar value. For VA Central Office, only the DSPE or designee may sign an interagency agreement.

(b) Each proposed VA field facility interagency agreement with another Federal agency awarded under authority of the Economy Act involving an anticipated expenditure of VA funds of $250,000 or more. A VA field facility contracting officer or a contracting officer at the VA National Acquisition Center or the Denver Acquisition and Logistics Center may sign an interagency agreement if the dollar threshold is within the contracting officer's warrant limit.

[Deviation per Class Deviation—801.602-75, Review Requirements—OGC dated April 12, 2017, updates the review requirements for the Office of General Counsel. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

801.602-75 Review requirements – OGC.

Contracting officers must obtain legal review or concurrence from OGC for the following contractual actions. While certain contract types and dollar thresholds are mandated for legal review, reviews may be requested at lower levels as determined by each respective HCA's review process.

Table 801.602-75

Type of contract actions	Anticipated Contract Award Value
(a) Stop Work Orders (contract termination, final decision, cure letter, "show cause" notice)	All actions
(b) Use of Letter contracts (includes modifications)	All actions
(c) Disputes or claims from a contractor	All actions
(d) An assignment of claims	All actions
(e) Proposed novation agreements and change-of-name agreements	All actions
(f) Construction solicitations, contracts, task orders, and modifications (change orders)	$7,000,000 or greater
(g) Supply or service solicitations, contracts, task orders, and modifications (change orders)	$7,000,000 or greater

Table 801.602-75 (continued)

Type of contract actions	Anticipated Contract Award Value
(h) Proposed task/delivery orders and blanket purchase agreements (includes orders under Federal Supply Schedule contracts)	$7,000,000 or greater
(i) Proposed cost-reimbursement, incentive, time-and-materials, and labor-hour contracts	$7,000,000 or greater
(j) Utility service agreements	$7,000,000 or greater
(k) Solicitations for advisory and assistance services	$7,000,000 or greater
(l) BPAs for supplies under Federal Supply Schedules (FSS) that are not issued by the National Acquisition Center (NAC)	$50,000,000 or greater

801.602-76 Business clearance review.

(a) A business clearance review is a technical review of all solicitation and contract award or modification documents immediately prior to contract award or modification over the specified dollar threshold.

(b) All VA contracting officers must obtain a business clearance review prior to award of any contract, task or delivery order, or blanket purchase agreement or execution of any contract modification with a value of $5 million or more or prior to award of any lease with a value of $300,000 or more per year.

(c) The dollar threshold in this paragraph is based on the total dollar value of all awards expected under a single solicitation, not the value of each individual award under a solicitation. For example, a solicitation for home oxygen for a Veterans Integrated Service Network (VISN) might result in multiple awards, each of which has a value of less than $5 million. If the total of all awards under that solicitation will exceed $5 million, the contracting officer must obtain a business clearance review of the entire package, including all proposed individual awards.

801.602-77 Processing solicitations and contract documents for legal or technical review – general.

(a) Under 801.602-70 through 801.602-76, before taking contract action, a contracting officer must ensure that any required legal or technical review or concurrence is complete. Contracting officers shall not award or sign contracts, task or delivery orders, blanket purchase agreements, or contract modifications prior to receipt of the final legal and technical review. Should the contracting officer disagree with the advice provided, the contracting officer shall document in the contract file the reasons therefore and provide a copy of that document to the reviewing Office of Acquisition and Materiel Management office. The contracting officer must fully implement any accepted review comments as follows:

~~(1) Before opening the bid or proposal for a competitively awarded~~ contract.

(2) Before executing contract documents for a contract modification or noncompetitive contract award.

(b) The contracting officer must advise potential bidders or offerors of changes made to the solicitation by issuing an amendment. The contracting officer must give bidders and offerors sufficient time for evaluation before the bid or proposal opens.

801.602-78 Processing solicitations and contract documents for legal or technical review – Veterans Health Administration field facilities, Central Office (except Office of Construction and Facilities Management), the National Acquisition Center, and the Denver Acquisition and Logistics Center.

(a) If legal or technical review is required, the documents listed in Table 801.602-78 must be forwarded for review and approval as shown therein.

Table 801.602-78

Documents	Person Forwarding	Forward To
(1) Proposed solicitations, quotations, contract-related documents, and agreements specified in Table 801.602.71 and in 801.602-72.	One level above the contracting officer	Appropriate Acquisition Resources Service central or regional office
(2) Scarce medical specialist and health-care resource solicitations, quotations, and proposed contracts (i.e., contracts to be awarded under the authority of 38 U.S.C. 7409 or 8153) specified in 801.602-73.	One level above the contracting officer	Director, Enhanced Sharing Program (10FL), VACO
(3) Interagency agreements specified in 801.602-74.	Approving official, contracting officer	DSPE, Acquisition Operations Service

(4) Proposed contract modifications, proposed contract modifications for which the contractor takes exception to the accord and satisfaction language VA specifies, assignment of claims, changes to clauses, and proposed utility connection agreements specified in 801.602-75(a)(3) through (a)(7) and in 801.602-75(a)(9) and (a)(10).	Contracting officer	OGC
(5) Proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602-75(a)(1) and (a)(2).	Contracting officer	Regional Office of the General Counsel

(b) The director of the Acquisition Resources Service office conducting the technical review has authority to determine whether to forward documents for legal review.

(c) When the contractor takes exception to the accord and satisfaction language VA specifies in a proposed contract modification, the contracting officer must not sign the modification until OGC concurs with the language proposed by the contractor.

(d) The contracting officer either must fax or send via overnight mail or e-mail all of the relevant documents on proposed contract terminations, final decisions, cure letters, show cause notices, disputes, and claims specified in 801.602-75(a)(1) and (a)(2). OGC will provide concurrence or comments either in writing or by telephone. The contracting officer must not sign or release a document to the contractor until OGC concurs.

(e) For any VA contract form subject to legal review under 801.602-75(a)(8), the contracting officer must process the change or revision in accordance with VA Manual MP-1, Part II, Chapter 4 and any supplements to it (https://www.va.gov/publ/direc/benefits/mp1p2ch4.htm).

801.602-79 Processing solicitations and contract documents for legal or technical review – Veterans Benefits Administration.

(a) Contracting officer must ensure that proposed solicitations, quotations, contract-related documents, and agreements listed in Table 801.602-71 are reviewed by the Office of Resource Management prior to document execution. The Office of Resource Management must request legal review of all these documents.

(b) Contracting officer must ensure that proposed solicitations or agreements for guidance center and vocational rehabilitation services are reviewed by the Director, Vocational Rehabilitation and Employment Service, if there is an anticipated expenditure of $100,000 or more.

801.602-80 Legal and technical review—Office of Construction and Facilities Management and National Cemetery Administration.

An Office of Construction and Facilities Management or National Cemetery Administration (Construction Support Division) contracting officer shall submit all A/E contracts, and all construction contracts, time extensions, and modifications, directly to Office of General Counsel (OGC) for review.

801.602-81 Documents required for business clearance reviews.

When a bid or offer, proposed contract modification, or proposed lease requires a business clearance review under 801.602-76, the contracting officer must forward the required documents (see 801.602-84) and the following information to the appropriate Acquisition Resources Service central or regional office. Office of Construction and Facilities Management and National Cemetery Administration (Construction Support Division) contracting officers shall forward the documents to OGC (025):

(a) The date on which award is anticipated.

(b) Results or efforts made to determine whether the contractor is responsible under FAR Subpart 9.4.

(c) A determination of price reasonableness.

(d) An explanation (e.g., the source selection decision as specified in FAR 15.308) if the contracting officer proposes an award to a contractor other than the low responsible bidder or offeror.

801.602-82 Documents to submit for legal or technical review – general.

Table 801.602-82 specifies the documents that must be submitted when a legal or technical review is required.

Table 801.602-82

Action or document subject to review	Documents to submit
(a) Proposed construction contract	One copy of each solicitation document, excluding drawings. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.
(b) Proposed solicitation or contract for scarce medical specialist services or health-care resources	One copy of the solicitation or proposed contract and documents required under VA Manual M-1, Part 1, Chapter 34.
(c) All other proposed solicitations, contracts, and agreements	One copy of each document to be used in the contract solicitation or award, and any other document that supports the proposed procurement action. Submit not later than the date on which the contracting officer furnishes the documents to prospective bidders.

801.602-83 Documents to submit for legal or technical review – contract modifications.

(a) The documents specified in this section related to proposed contract modifications must be submitted to Acquisition Resources Service for review under one or more of the following conditions:

(1) When the total modification value is $100,000 or more.

(2) When the modification is for a time extension of 60 days or more.

(3) Where the contractor takes exception to VA's accord and satisfaction language.

(b) The contracting officer must submit the following documents for review:

(1) A draft of the proposed modification prepared on SF 30, Amendment of Solicitation/Modification of Contract, specifying the exact language proposed and describing any change in work, time, or cost.

(2) A statement describing the need for the changed work with any back-up documentation, including a copy of the general statement of work in the original contract and any existing contract language that will be modified.

(3) A statement addressing whether the proposed modification is within the original scope of the contract and specifically addressing the facts considered in reaching the conclusion.

(4) A statement analyzing what necessitated the modification (e.g., a design error, technical changes, or medical center requirements).

(5) The contracting officer's technical representative's (COTR) technical evaluation of the proposed change.

(6) A memorandum from the appropriate office indicating that funds are available or a statement concerning the actions that must be taken to secure the required funds.

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

(8) Costing information including the following:

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

(ii) The COTR's independent cost evaluation.

(iii) The architect/engineer's independent cost evaluation, if applicable and available.

(iv) The contracting officer's Price Negotiation Memorandum under FAR 15.406-3.

(v) Any other relevant costing information, such as independent market research, that VA used or will use as negotiation criteria.

(c) For a proposed modification to an architect/engineer contract, the contracting officer must submit for review each document specified in paragraph of this section and the following additional documents.

(1) A listing of the fees awarded in the original contract and previous modifications.

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

(d) For a modification to a construction contract or, where applicable, to an architect/engineer contract, the contracting officer must submit for review a copy of the COTR's mark-up of any drawing that delineates the proposed changed work, including a copy of any pertinent technical specifications. When there is a proposed modification involving numerous changes to drawings and specifications for a VA Central Office project, the drawings and specifications must be available for review in the Office of the Project Director in VA Central Office.

801.602-84 Documents to submit for business clearance reviews.

A contracting officer must submit to Acquisition Resources Service (Office of Construction and Facilities Management and National Cemetery Administration contracting officers shall forward the documents to OGC (025)) for review copies of the following documents when a business clearance review is required in accordance with 801.602-76:

(a) The request for contract action, including a justification of need (i.e., the using service purchase request).

(b) The solicitation.

(c) The abstract of the subject bid or offer.

(d) Any applicable Price Negotiation Memorandum.

(e) A statement of the contracting officer's rationale for award.

(f) Any applicable justification and approval under FAR 6.303 and 6.304.

(g) Documents relevant to determining whether the contractor is responsible, including:

(1) Verification that the vendor is not suspended, debarred, or on the Department of Health and Human Services Exclusionary List;

(2) Verification that the vendor has filed any required VETS 100 report (not required if the acquisition is for a commercial item); and

(3) For acquisitions exceeding $10 million, the Equal Employment Opportunity Clearance.

(h) Any applicable approved subcontracting plan.

(i) Documents relevant to price reasonableness (i.e., all documents used to support the contracting officer's determination of price reasonableness).

801.602-85 Results of review.

(a) When the review is complete, the reviewing office will advise the appropriate Central Office activity or contracting officer that the proposal was approved as submitted or provide them with recommended changes. If the Central Office activity is notified, the Central Office activity will forward the information to the contracting officer.

(b) When changes are recommended by technical or legal review staff, if the contracting officer concurs, the contracting officer must take immediate action to amend the document. If the contracting officer does not concur, the contracting officer must discuss the recommended changes with the technical reviewer or the attorney involved and document in the contract file the reasons why the contracting officer is not following the reviewer's recommendations.

(c) Acquisition Resources Service and OGC will complete reviews as expeditiously as possible, with due regard for procurement actions that require an unusually short period for completing the procurement.

801.603 Selection, appointment, and termination of appointment.

801.603-1 General.

VAAR 801.690 through 801.690-9 and 801.670 establish the policy and procedures for selecting, appointing, and terminating a contracting officer.

[Deviation per Class Deviation—801.603-70, Representatives of Contracting Officers dated October 20, 2010, revises this section to allow Heads of Contracting Activities (HCAs) to designate non-warranted personnel as ordering officers to issue orders against indefinite delivery vehicles for supplies and services, as well as blood contracts. This deviation is applicable to indefinite delivery vehicles for supplies and services, where pricing is established by the contracts and no further negotiation is required. Remains in effect until otherwise rescinded.]

801.603-70 Representatives of contracting officers.

(a) In carrying out the responsibilities of FAR 1.602-2, the contracting officer may designate another Government employee as COTR to perform the functions in this section and 801.603-71.

(1) Except as indicated in 801.603-71, a designation under this section must be in writing, must define the scope and limitation of the representative's authority, and must be addressed to the COTR with a copy forwarded to the contractor.

(2) The COTR may not re-delegate authority received under this paragraph.

(3) The contracting officer may not authorize a representative to make any commitment or change that will affect the price, quantity, quality, or delivery terms of a contract.

(4) A contracting officer acting within his or her warranted contracting authority must authorize any change to a contract.

(b) A contracting officer may authorize his or her technical representative to do the following:

(1) Furnish technical guidance and advice or generally supervise the work performed under the contract.

(2) Take any action authorized in the contract, such as issuing a delivery order, rejecting an unsatisfactory item, ordering a replacement of an unsatisfactory item (materials or services) or declaring a contractor in default on specific delivery orders.

(i) Except for a contract for blood and orders placed by duly authorized ordering officials against awarded indefinite delivery vehicles, the contracting officer may delegate this authority only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state.

(ii) A centralized contract for blood must state that a contracting officer at an ordering office may designate representatives and alternate representatives to place a delivery order subject to the same restrictions in paragraph (b)(3) of this section.

(iii) A contracting officer may designate individuals as ordering officers with the authority to execute orders against an awarded indefinite delivery vehicle subject to the restrictions in paragraph (b)(4).

(3) Place an oral or other informal delivery order for items such as, but not limited to, bread, milk, and blood against a local indefinite delivery type contract for which there is a blanket purchase arrangement and for which funds have been obligated.

(4) Ordering officer. HCAs must establish procedures to delegate authority to non-warranted VA personnel to place orders against their own indefinite delivery vehicles where fixed terms and prices are established in the contract. Ordering officers do not have the authority to negotiate, determine price reasonableness, or determine best value. The contract must state that a

contracting officer may designate representatives and alternate representatives to place orders against the indefinite delivery vehicle. Ordering officer authority limitations are to be established through individual appointment letters.

[Deviation per Class Deviation—801.603-70, Representatives of Contracting Officers, dated November 19, 2014, revises the October 20, 2010 deviation (VAIQ 7003833) to allow Heads of Contracting Activities (HCAs) to designate non-warranted personnel as ordering officers for non-VA contracts where prices are pre-established and no further negotiations are required. Remains in effect until otherwise rescinded.]

(5) Ordering officer – Non-Veterans Affairs (VA) contract awards. HCAs must establish procedures to delegate authority to non-warranted VA personnel to place orders against HCA-approved vehicles. Order procedures must limit placement to use of existing terms and prices. Ordering officers do not have the authority to negotiate, determine price reasonableness, or determine best value. The contract must state that a contracting officer may designate representatives and alternate representatives to place orders against the indefinite-delivery vehicle. Ordering officer authority limitations are to be established through individual appointment letters, and must include order placement procedures.

(c) In the administration of research and development contracts, any representative appointed under this section must be acceptable to the contracting officer and the head of the organization concerned.

(d) When the contracting officer intends to designate a representative under this section for a particular solicitation or contract, the contracting officer must include the clause in 852.270-1, Representatives of contracting officers, in the solicitation and contract.

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

(a) Without prior notification to the contractor or vendor, the contracting officer may designate other competent personnel, i.e., COTRs, to represent him or her to receive and inspect supplies, equipment and services at a VA facility. The COTRs may perform duties, as specified by the contracting officer, such as, but not limited to, the following:

(1) Inspect and certify compliance with the quality and quantity requirements of the purchase order or contract.

(2) Inspect supplies and equipment for condition and quantity and accept supplies, equipment, and services, based on quality inspection made by another authorized representative.

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

801.670 Special and limited delegation.

The authority vested in the Secretary to execute, award, and administer a contract, purchase order, or other agreement for the expenditure of funds to acquire the specific services set forth in 801.670-1 through 801.670-4 is delegated to the SPE. The SPE further delegates this authority to the DSPE and to employees appointed or designated to the positions specified in those sections.

801.670-1 Issuing bills of lading.

The authority to issue bills of lading previously contained in this section is rescinded. Except for individual small package shipments (e.g., United Parcel Service, Federal Express, or United States Postal Service small package shipments), no VA employee may issue a bill of lading or otherwise procure transportation services for goods unless the employee has been delegated authority to do so as a warranted contracting officer under the VA Contracting Officer Certification Program (ref. 801.690). All transportation services for goods, other than for small package shipments, require a bill of lading. Except for individual small package shipments, individuals with only micro-purchase authority may not issue bills of lading or otherwise procure transportation services. The dollar value of the bill of lading issued or transportation services acquired must not exceed the delegated authority of the contracting officer. Candidates for appointment as transportation contracting officers whose delegated authority will be limited to the acquisition of transportation services for goods only shall comply with the Education, Experience, and Training requirements, if any, in Part 102-117 of title 41 Code of Federal Regulations, the Federal Management Regulation, rather than the requirements in 801.690.

801.670-3 Medical, dental, and ancillary service.

(a) When medical, dental, and ancillary services under $10,000 per authorization are not available from an existing contract or agreement, the following VA officials at VA medical facilities may authorize these services:

(1) The Chief of Staff and the physician assigned the responsibility for the ambulatory care function.

(2) Chief, Medical Administration Service, or the person designated by the facility director to perform medical administration functions.

(b) Forms specified in Part 853 shall be used for ordering services under this paragraph from existing contracts.

(c) The officials named in paragraph (a) of this section may designate one or more of their subordinates to exercise the authority in paragraph (a) of this section.

(d) A designation under this section must be in writing and specifically set forth the scope and limitations of the designee's authority.

801.670-4 National Cemetery Administration.

The Director of Logistics Management Service, the Centralized Contracting Division, and the Construction Support Division are authorized to procure supplies, equipment and non-personal services (including construction) for National Cemetery Administration (NCA) field facilities and other NCA offices when there is an emergency during which the servicing supply organization cannot be used.

801.670-5 Letters of agreement.

(a) Letters of agreement shall not be used. The authority previously contained in this section is rescinded.

(b) The VA Office of Inspector General may issue contracts for commercial items, including services, using a letter format (see FAR 12.204(a)), provided billing information and required clauses are included in the contract. If the dollar value of the acquisition will exceed the simplified acquisition threshold, this is a deviation from the requirement to use Standard Form 1449 at FAR 12.204(a).

801.680 Contracting authority of the Inspector General.

(a) Under section 6(a) of Public Law 95-452 (October 12, 1978), the Inspector General may do the following:

(1) Contract or arrange for audits, studies, analyses, and other services with public agencies and with private persons.

(2) Make payments necessary to carry out the provisions of the Act, to the extent and in amounts provided in advance by appropriations acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may ask the servicing head of the contracting activity for assistance in developing appropriate contract or agreement documents.

(c) The FAR applies to contracts made under paragraph (a) of this section. Such contracts also are subject to provisions of the VAAR that implement and supplement the FAR on matters other than those stemming from or related to delegations of the Secretary's contracting authority. (For example, management controls and approvals specified in Subpart 837.2 will not apply to contract actions under the contract authority of the Inspector General.)

801.690 VA's COCP.

801.690-1 Definitions.

Accredited college or university means a college or university that has been accredited by an accrediting agency recognized by the U.S. Department of Education (see http://www.ed.gov/admins/finaid/accred/index.html) or accredited by a foreign government.

ACEP means the Acquisition Continuing Education Program, a program to provide VA's acquisition workforce with classroom knowledge to further develop their acquisition skills. The program supports VA personnel in the GS 1102 contracting series, other contracting officers (regardless of General Schedule series), contracting officers' technical representatives, and contracting officers' representatives to ensure that they meet the continuing education requirements mandated by OFPP Policy Letter No. 05-01, Developing and Managing the Acquisition Workforce, dated April 15, 2005 (see http://www.whitehouse.gov/omb/procurement/policy_letters/05-01_041505.html) and the OFPP Memorandum dated January 20, 2006, titled The Federal Acquisition Certification in Contracting Program (see http://www.whitehouse.gov/omb/procurement/acq_wk/fac_contracting_program.pdf).

ACM means the Acquisition Career Manager, who is the Associate Deputy Assistant Secretary for Acquisitions.

Acquisition Workforce means those VA employees who are classified as: GS 1102 contract specialists; GS 1105 purchasing agents; contracting officers warranted above the micro-purchase threshold; program and project managers and other significant acquisition-related positions as otherwise identified by the VA Chief Acquisition Officer; contracting officers' technical representatives; and contracting officers' representatives. The acquisition workforce may also include a limited number of employees that perform significant acquisition-related responsibilities, (e.g., employees in the GS-345, GS-346, GS-801, GS-1101,GS-1106, GS-1170, GS-2001, GS-2003, and GS-2005 job series and select program officials).

Appointment means the delegation of authority to any VA employee to enter into, administer, or terminate contracts and to make related determinations and findings.

ATCD means the Acquisition Training and Career Development Division.
Certificate of Appointment as Contracting Officer is a signed certificate on Standard Form 1402 used for the written appointment of contracting officers that states the scope, limitation, and term of the contracting officer's authority.

CLP means continuous learning point, as provided in OFPP Policy Letter 05-01. One CLP is generally equivalent to one hour of classroom training.

COCB means the Contracting Officers Certification Board, a group of VA officials, listed at 801.690-3(c), who evaluate and recommend to the DSPE individuals for delegation of contracting authority as Level II warrant or Level III warrant (Senior Limited or Unlimited) contracting officers.

COCP means the Contracting Officers Certification Program, VA's program established for the selection, appointment, and termination of appointment of contracting officers.

COQS means the Contracting Officer Qualification Statement, a document completed by a candidate for a position as contracting officer that accompanies the request for contracting authority. The certified statement includes information on experience, education, training, and pertinent contracting authority information. The COQS is accompanied by supporting documentation such as training certificates, copies of prior and current warrants, college transcripts, and other relevant information.

Federal Acquisition Certification (see OFPP Policy Letter 05-01, paragraph 8) means a certification program developed by the Federal Acquisition Institute and OFPP that generally reflects a Government-wide standard for education, training, and experience leading to the fulfillment of core competencies in acquisition-related disciplines.

Selection means the appointment of an employee as a contracting officer. The selection process shall consider the complexity and dollar value of the assigned work, the candidate's experience, training, education, business acumen, judgment, character, reputation, and knowledge of acquisition policies, rules and regulations.

Skills Currency means the level of knowledge and abilities that a Level I warrant or higher level warrant contracting officer attains as the result of participating in a minimum of 80 CLPs of continuing education or training every two years. The training is intended to ensure that the employee maintains current acquisition knowledge and skills, as mandated by OFPP Policy Letter No. 05-01 and the OFPP Memorandum dated January 20, 2006, titled The Federal Acquisition Certification in Contracting Program.

Termination means the revocation or rescission of an appointment as contracting officer.

801.690-2 General.

(a) The VA COCP applies to all VA programs except for the appointment of contracting officers under the Inspector General Act (Public Law 95-452) and for contracting officers designated in sections 801.670 through 801.670-5. The COCP also applies to VA officials granted authority to enter into sales agreements (see separate guidance under VA's Directives Management System).

(b) A Certificate of Appointment is not required for a contracting officer designated in 801.670 who exercises special and limited delegations of authority.

(c) Warrant levels are synonymous with the Federal Acquisition Certification in Contracting Program certification levels specified in the OFPP Memorandum dated January 20, 2006, titled "The Federal Acquisition Certification in Contracting Program." The COCP is based on the following levels and types of authority:

(1) Level I warrant. Authority for expenditures at or below the simplified acquisition threshold (see FAR 2.101) for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts (except Federal Supply Schedule (FSS) contracts), within the specified geographical limits of the contracting officer's warrant. For FSS contracts, Level I warrant authority includes authority for expenditures up to the maximum order threshold of the FSS contract, within the specified geographical limits of the contracting officer's warrant. This level was formally titled "Basic" and any current Basic Level warrant need not be reissued solely to change the title.

(2) Level II warrant. Authority for expenditures at or below $5,000,000 or as stated on Standard Form 1402 for open market contracts, blanket purchase agreements, basic ordering agreements, and delivery/task orders against established contracts, within the specified geographic limits of the contracting officer's warrant. This level was formally titled "Intermediate" and any current Intermediate Level warrant need not be reissued solely to change the title.

(3) Level III (Senior Limited) warrant. Authority for expenditures at or below the dollar threshold and within the geographical limits specified on the contracting officer's warrant, Standard Form 1402. This level was formally titled "Senior Limited" and any current Senior Limited Level warrant need not be reissued solely to change the title.

(4) Level III (Senior Unlimited) warrant. Authority granted to VA's contracting officers in contracting activities (e.g., the VA National Acquisition Center, Hines, IL, and Acquisition Operations Service, VA Central Office, Washington, DC) that are charged with meeting Department-wide acquisition needs of VA and its customers. The authority is for expenditures at any dollar

level without geographical restriction. This level was formally titled "Senior Unlimited" and any current Senior Unlimited Level warrant need not be reissued solely to change the title.

(5) Multi-VISN. Authority at the Level II warrant and Level III (Senior Limited) warrant levels, granted by the DSPE, that permits procurement consolidations among Veterans Health Administration VISNs, Veterans Benefits Administration Area Offices, and other Government agencies that exist outside the contracting officer's normally assigned geographical area of appointed authority. Multi-VISN authority is generally granted to contracting officers for procurement-specific requirements or to contracting officers who are members of groups or consortiums established for regional contracting initiatives.

(d) Micro-purchase Level. Micro-purchase Level authority, not to exceed the micro-purchase threshold (currently $3,000) ($2,500 for acquisition of services subject to the Service Contract Act, and $2,000 for acquisition of construction subject to the Davis Bacon Act) (see FAR 2.101), is separately addressed under VA's purchase card program. Under that program, the HCA may delegate authority to a VA employee as a purchase card holder through the issuance of VA Form 0242.

801.690-3 Responsibilities under the COCP.

(a) DSPE. The DSPE is responsible for the following:

(1) Administering and overseeing the COCP;

(2) Appointing and terminating Level II warrant and Level III (Senior Limited and Unlimited) warrant contracting officers; and

(3) Establishing and developing additional agency-specific training;

(4) Developing and implementing policy, procedures, and guidance for VA's acquisition program.

(b) The Chief, Acquisition Program Management Division. The Chief, Acquisition Program Management Division, serves as the Executive Secretary to the COCB and is responsible for the following:

(1) Coordinating requests for contracting authority with the COCB;

(2) Proceeding accordingly with appropriate action to carry out the decisions of the DSPE and the COCB;

(3) Maintaining individual records on the appointment and termination of appointment of contracting officers. Records on contracting officers include HCA certifications and qualification statements, Certificates of Appointment, and other supporting documentation used to grant authority; and

(4) Ensuring appropriate and timely disposition of records through the Office of Acquisition and Materiel Management's Records Control Officer.

(c) The COCB.

(1) The Director, Acquisition Resources Service, will chair the COCB.

(2) COCB membership consists of:

(i) The Chief, Acquisition Program Management Division; and

(ii) The Chief, Acquisition Training and Career Development Division (ATCD).

(d) HCAs. HCAs are responsible for the following:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and nonpersonal services required by the activity to which the HCA is assigned;

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

(3) Appointing or terminating the appointment of contracting officers at the Micro-purchase Level and Level I warrant level within their assigned activity;

(4) Establishing procedures and maintaining records for the appointment and termination of appointment of purchase card holders at the Micro-purchase Level and Level I warrant contracting officers. Records maintained on contracting officers shall include the contracting authority, certification and qualification statements;

(5) Recommending to the DSPE the appointment or termination of appointment of contracting officers at the Level II warrant and Level III (Senior Limited or Unlimited) warrant levels of authority, certifying the candidate's qualifications, and justifying the organizational need;

(6) Ensuring that all GS 1102 contract specialists and other contracting officers meet the minimum core training and continuing education requirements; and

(7) Certifying that the assigned acquisition workforce meets the minimum training, education, and skills currency requirements prescribed by OFPP and the DSPE.

(e) VA Acquisition Workforce. All employees identified as members of VA's acquisition workforce (see 801.690-1) are responsible for maintaining records that include certificates of acquisition training, continuing education, college transcripts, work experience, and other supporting documentation needed to substantiate successful completion of all warrant requirements. These employees shall enroll in the Acquisition Career Management Information System (ACMIS), the data system that serves as the repository of required information on VA's acquisition workforce.

801.690-4 Selection.

(a) The HCA may appoint Level I warrant contracting officers or submit written requests to the DSPE for appointment of Level II warrant or Level III (Senior Limited or Unlimited) warrant contracting officers. A VA official one level above the HCA may submit a written request to the DSPE for the appointment of an HCA as a contracting officer.

(b) Appointment can only be requested in those circumstances where it can be demonstrated that a valid organizational need exists. In making this assessment and justification, the HCA will consider the complexity of the work, volume of actions, organizational structure, and human resource management actions and forecasts, such as rates of retirement, reassignment, and retention.

(c) The request shall consist of the following:

(1) Justification for requesting contracting authority to be granted;

(2) Certification that the candidate's experience and training meet the established minimum qualifications for the requested contracting authority;

(3) Certification that the candidate has a satisfactory-or-above performance rating;

(4) Certification that the candidate maintains high standards of conduct and avoids apparent or actual conflicts of interest, and

(5) Certification that the candidate has appropriate working knowledge of the FAR, VAAR, and other applicable laws, regulations, policies and procedures.

(d) The accompanied COQS shall include the following information:

(1) Candidate's name, position title, series, grade, and location;

(2) Candidate's relevant acquisition or business-related experience that reflects the required number of years of progressive work assignments leading to broader technical abilities;

(3) Education background, including number of acquisition or business-related college credits;

(4) List of core training requirements or equivalent courses that have been successfully completed;

(5) List of continuing education requirements successfully completed within the last two years;

(6) List of current and prior warrant authorities, limitations, and information on termination and cause for termination;

(7) List of other acquisition related activities or memberships;

(8) Certification that the statement is accurate and complete to the best of the candidate's knowledge; and

(9) Attached copies of acquisition or business-related training certificates, course certificates, and diplomas, transcripts, or degrees from accredited colleges or universities.

801.690-5 Requirements for contracting authority.

(a) Effective January 1, 2007, no individual, regardless of job series, may be issued a new contracting officer warrant above the micro-purchase threshold unless the individual meets the requirements for Federal Acquisition Certification (Certification) for the applicable Level I, II, or III warrant level as specified in OFPP Policy Letter 05-01 and the OFPP Memorandum dated January 20, 2006, titled “the Federal Acquisition Certification in Contracting Program.” A new contracting officer warrant is defined in OFPP Policy Letter 05-01 as a warrant issued for the first time at a department or agency. For contracting officers warranted before January 1, 2007, certification will not be required to retain their existing warrants, but will be required before higher level warrants can be issued. Certification includes minimum requirements for education, training, and experience. A candidate for a warrant must have at least a satisfactory-or-above performance rating during the most recent performance period.

(b) For contracting officer warrants issued prior to January 1, 2007, the minimum requirements for qualifying as a contracting officer previously specified in VA regulation and other internal VA guidance shall apply.

(c) Multi-VISN. The HCA shall obtain written or e-mail concurrence from the HCAs of the other affected VISNs or Area Offices when requesting Multi-VISN contracting authority.

(d) Training. (1) Contracting officers and non-warranted contract specialists shall complete the required coursework and on-the-job training needed to possess the established competencies listed in OFPP's Federal Acquisition Institute Contract Specialist Training Blueprints (http://www.fai.gov/policies/contract.htm).

(2) The Chief, ATCD, oversees the ATP.

(3) Training course equivalency will be determined and approved by the Chief, ATCD. Candidates should contact the Chief, ATCD, for an equivalency determination and must furnish any information or evidence necessary to support the request. Appeals of decisions may be made to the VA ACM and the decisions of the ACM shall be final.

(e) Skills Currency. (1) Contracting officers and non-warranted contract specialists who have completed the core training requirements shall obtain a minimum of 80 CLPs of continuing education or training every two fiscal years to stay abreast of current acquisition knowledge and skills as mandated by OFPP. The HCA (for Level I warrant contracting officers) and the Chief, ATCD (for Level II warrant and Level III warrant contracting officers), shall make written determinations every October 1 for each warranted contracting officer on whether the required CLPs, as specified in OFPP guidance, were completed during the two prior fiscal years. The HCA shall assign CLP values to training taken by Level I warrant contracting officers for training that does not have pre-assigned CLP or continuing education unit (CEU) values assigned to the training by the provider. The Chief, ATCD, shall assign CLP values to training taken by Level II warrant and Level III warrant contracting officers for training that does not have pre-assigned CLP or CEU values assigned to the training by the provider. Values shall be assigned based on guidance provided by OFPP and the combined efforts of the Federal Acquisition Institute and the Defense Acquisition University. Questions regarding the CLP or CEU values assigned to training shall be resolved by the ACM.

(2) The Chief, ATCD, is responsible for the management of the ACEP, the program that assists contracting officers and contract specialists to meet the training requirements.

(3) An expiring warrant will not be re-issued if the contracting officer has not met the continuing education or training requirement.

(f) Education. (1) The 24 business-related college credits shall be in any combination of the following fields of study at an accredited college or university: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(2) The HCA will make the final determination whether a course is accepted as business-related for the purpose of granting Level I warrant authority. The Chief, ATCD, will make the final determination whether a course is accepted as business-related for the purpose of granting Level II warrant or Level III warrant contracting authority.

(3) American Council on Education (ACE) credits are not considered as college credits until they are converted and included on a transcript from an accredited college or university.

(g) Grandfather provision for the education requirement. (1) VA contracting officers, regardless of grade level, who currently hold Level I, Level II, or Level III (Senior Limited or Unlimited) warrants are considered as having met the Experience, Education, and Training requirements for their respective warrant levels. This includes transfers or laterals to other VA contracting activities with similar geographical restrictions. Contracting officers who are promoted up to a GS-12 can maintain their current warrant level authority.

(2) This Grandfather provision does not cover new VA employees, current VA employees who are not warranted, former VA employees who held contracting authority at their previous Federal Government agencies or VA positions, or VA employees whose warrants have been rescinded or have expired. VA contracting officers who are promoted to GS 13-and- above will no longer be covered by this Grandfather provision and, therefore, must meet the current Experience, Education, and Training requirements for the specific warrant authority that they currently hold or to which they wish to be appointed. Contracting officers requesting a higher level warrant (e.g., from Level I warrant to Level II warrant or from Level III (Senior Limited) warrant to Level III (Senior Unlimited) warrant) must also meet the current Experience, Education, and Training requirement for the specific warrant authority requested.

(3) This Grandfather provision for retaining a contracting officer's current warrant authority is voided if the contracting officer does not fully meet the minimum Skills Currency requirement prior to warrant expiration or when the warrant authority is suspended or revoked. The contracting officer will then need to meet all of the current warrant prerequisites before a new warrant can be issued or before the suspended or revoked warrant can be reinstated.

(h) The training requirements for contracting officers whose delegated authority is limited to the acquisition of transportation services, as provided in Part 102-117 of title 41 Code of Federal Regulations, the Federal Management Regulation, shall be as specified therein.

801.690-6 Appointment.

(a) Only the DSPE (for Level II and Level III (Senior Limited or Unlimited)) warrants and the respective HCA (for Level I warrants) may sign the Certificate of Appointment as Contracting Officer. HCAs are authorized to grant Micro-purchase Level and Level I warrant contracting authority up to the thresholds specified for these authorities at 801.690-2(c). The HCA may recommend a candidate to the DSPE for appointment as a Level II warrant or Level III warrant contracting officer. Only the DSPE may grant Level II warrant, Level III (Senior Limited or Unlimited) warrant, and Multi-VISN authority.

(b) All Certificates of Appointment as Contracting Officers and other written documents must clearly state any limitations or restrictions on the authority.

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

801.690-7 Termination.

(a) The DSPE (for all warrant levels) or HCA (for Micro-purchase Level and Level I warrants) may revoke or rescind the appointment of a contracting officer at any time. HCAs may submit a recommendation to revoke or rescind the appointment of a contracting officer's Level II warrant or Level III (Senior Limited or Unlimited) warrant to the DSPE. Revocation may be based on the following circumstances:

(1) There is no longer a need for the appointment;

(2) There has been a personnel action such as a resignation, retirement, transfer;

(3) Unsatisfactory performance;

(4) Alleged official misconduct pending criminal or administrative investigations;

(5) Failure to meet training or skills currency requirements;

(6) A contracting officer taking an action that exceeds his or her authority;

(7) Blatant disregard for adhering to acquisition regulations, policies and procedures; or

(8) Situations similar to those in paragraphs (a)(1) through (7) of this section that may require remedial action.

(b) The HCA should discuss a termination of contracting authority for cause with the servicing Human Resource Management Office to determine the impact, if any, on the contracting officer's continued employment.

(c) All changes in the status (e.g., departure; name, position, or grade change) of a micro-purchase cardholder or Level I warrant holder shall be reported in writing by the individual's supervisor to the HCA within five workdays of occurrence. All changes in the status of a Level II warrant or Level III (Senior Limited or Unlimited) warrant holder shall be reported in writing by the HCA to the DSPE within five workdays of occurrence. Level II warrants or Level III (Senior Limited or Unlimited) warrants that are terminated, rescinded or superseded should be returned to the Director, Acquisition Resources Service (049A5), citing the exact reason for the termination, rescission, or supersession.

801.690-8 Interim appointment provisions.

(a) To ensure availability of procurement support, an interim appointment may be granted for a limited period of time when a candidate does not fully meet the minimum qualifications for Experience, Education, or successful completion of all acquisition Training requirements in previous VA regulations or VA internal guidance, if applicable, or as provided in the OFPP Memorandum dated January 20, 2006, titled "the Federal Acquisition Certification in Contracting Program." All interim appointments made after January 1, 2007, for individuals who do not meet the minimum Experience, Education, or Training requirements for Levels I through III warrants shall be signed by the SPE or, if so delegated, the ACM, without power to redelegate, as provided in the OFPP Memorandum dated January 20, 2006, titled "the Federal Acquisition Certification in Contracting Program."

(1) In a request for an interim appointment, the HCA must include the information required by 801.690-4 on the candidate's training, experience, performance, and education, and a justification for the interim appointment.

(2) The HCA must ensure that the candidate with interim appointment meets the minimum Experience, Education, and Training requirements within the time specified on the warrant.

(3) A contracting officer with interim appointment should successfully complete all remaining required courses or equivalent courses within the time specified on the warrant.

(b) At the HCA's written request, a permanent warrant may be issued during the interim appointment period when the contracting officer has satisfactorily met the requirements. The appropriate documentation (copies of course certificates) must be submitted with the HCA's request.

(c) An interim appointment may be appropriate for instances such as organizational changes or sudden, extreme, and unexpected increases in workload complexity and/or volume.

(d) Interim appointments will not be granted under the following circumstances:

(1) To a candidate who is warranted but does not meet the Education or Training requirements for higher level (e.g., from Level I warrant to Level II warrant) contracting authority (unless waived by the SPE);

(2) To a candidate who does not have a current record of satisfactory-or-above performance; or

(3) To a contracting officer whose authority has expired and who has not met the continuing education requirement during the two preceding years.

(e) Generally, an interim appointment may not exceed one year.

801.690-9 Distribution of Certificates of Appointment.

(a) The DSPE or HCA will issue an original Certificate of Appointment as Contracting Officer to the appointed candidate, who must display the Certificate at his or her duty station.

(b) The HCA shall file a copy of the warrant in the delegation of authority file.

(c) The contracting officer must furnish a copy to the respective fiscal activity.

(d) Each Certificate will be serially numbered, reflecting the facility number, the year of issuance (e.g., facility number – year of issuance (2 digits) – sequential number, 560-04-10), and have an effective and expiration date.

801.695 VA's Appointment of HCAs Program.

801.695-1 Policy.

(a) VA's policy is to have a minimum number of HCAs. Generally, there will be one HCA per VISN, other major VA organizational element, or major acquisition organization. The authority vested in the Secretary to select, appoint, and terminate HCAs is delegated to the SPE and is further delegated from the SPE to the DSPE.

(b) Under the FAR at 1.601(a) and 2.101, an HCA is a senior level position. The official who occupies this position should have the education, training, and experience necessary to make the decisions required of an HCA.

(c) Except as provided in the FAR, an HCA may delegate his or her authority to other individuals within the HCA's acquisition activity. Such delegations must be in writing and must set forth the specific limitations on the designee's authority. The delegation may include authority to appoint a contracting officer at the Micro-purchase Level or the Level I warrant levels.

801.695-2 Procedures for appointment of HCAs.

An HCA must be appointed in writing by the DSPE and in accordance with internal VA policy. The written delegation must state any limitation on the HCA's authority, other than a limitation contained in an applicable law or regulation.

801.695-3 Authority of the HCA.

(a) The HCA has overall responsibility for managing the procurement program assigned to the activity.

(b) The HCA's level of contracting authority, if any, shall be specified in the HCA's appointment letter.

(c) The HCA has the authority to appoint and terminate contracting officers with authority to conduct procurements of up to and including the simplified acquisition threshold or the maximum order threshold or limitation for orders placed against Federal Supply Schedule contracts, and to terminate such appointments (Micro-purchase Level and Level I warrant appointments).

This page intentionally left blank.

SUBCHAPTER A—GENERAL

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1 – Definitions

Sec.
802.101 Definitions

AUTHORITY: 38 U.S.C. 8127 AND 8128; 40 U.S.C. 121(c) AND (d); AND 48 CFR 1.301–1.304.

This page intentionally left blank.

SUBPART 802.1 – DEFINITIONS

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016) dated July 25, 2016, revises VAAR 802.101 to add the definition for Public Law (Pub. L.) 109-461; replaces the definition for *Service-disabled veteran-owned small business (SDVOSB)*; adds the definition for *VA Rule of Two*; replaces the definition for *Vendor Information Pages (VIP)*; adds the definition for *Veterans First Contracting Program*; and replaces the definition for *Veteran-owned small business (VOSB)*. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per Class Deviation—from VA Acquisition Regulation (VAAR) Section 802.101, Definitions and Subpart 809.4, Debarment, Suspension and Ineligibility dated June 2, 2017, rescinds Class Deviation from VA Acquisition Regulation (VAAR) VAAR 802.101, Definitions and from 809.400, Debarment, Suspension and Ineligibility," dated April 30, 2015; the deviation implements specific processes and criteria pursuant to 38. U.S.C. 8127(g), and updates VA's policies and procedures for suspensions and debarments. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

802.101 Definitions.

A/E means architect/engineer.

Chief Acquisition Officer means the Assistant Secretary for Management.

COTR means Contracting Officer's Technical Representative or Contracting Officer's Representative.

DSPE means the Deputy Senior Procurement Executive, who is also the Associate Deputy Assistant Secretary for Acquisitions. The DSPE must be career member of the Senior Executive Service.

FAR means the Federal Acquisition Regulation.

GAO means the Government Accountability Office.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA's Appointment of HCAs Program (see 801.695).

OGC means the Office of the General Counsel.

Public Law (Pub. L.) 109-461 means the Veterans Benefits, Health Care and Information Technology Act of 2006, as amended and codified in 38 U.S.C. 8127 and 8128.

Resident Engineer has the same meaning as contracting officer's technical representative or contacting officer's representative (see 852.270-1).

Service-disabled veteran-owned small business (SDVOSB) has the same meaning as service-disabled veteran-owned small business concern defined in FAR 2.101, except for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program. These businesses must be listed as verified in the VIP database. In addition, some of the SDVOSB businesses listed in the VIP database may be owned and controlled by a surviving spouse. See definition of surviving spouse in 802.101.

Small business concern has the same meaning as defined in FAR 2.101.

SPE means the Senior Procurement Executive who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. The SPE is responsible for the management direction of the VA acquisition system. The SPE may further delegate authority to the DSPE.

Surviving spouse means an individual who has been listed in the Department of Veterans Affairs' (VA) Veterans Benefits Administration (VBA) database of veterans and family members. To be eligible for inclusion in the VetBiz.gov VIP database, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability rating or the veteran died as a direct result of a service-connected disability.

S&D Committee means a committee authorized by the SDO to assist the SDO with suspension and debarment related matters.

Suspending and Debarring Official (SDO) means the Senior Procurement Executive (SPE), or Deputy Senior Procurement Executive (DSPE) if further delegated in writing by the SPE.

VA means the Department of Veterans Affairs.

VA Rule of Two means the process in 38 U.S.C. 8127(d) whereby a contracting officer of the Department "shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States." For purposes of this VA specific rule, a service-disabled veteran-owned small business (SDVOSB) or a veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR 819.7003 and be listed as verified in the Vendor Information Pages (VIP) database.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

Vendor Information Pages (VIP) database means the Department of Veterans Affairs Office of Small and Disadvantaged Business Utilization (OSDBU) Vendor Information Pages (VIP) database at https://www.vip.vetbiz.gov. This site's database lists businesses that the VA Center for Verification and Evaluation (CVE) has determined eligible for the Veterans First Contracting Program.

Veterans First Contracting Program means the program authorized by 38 U.S.C. 8127 and 8128 (Pub. L. 109-461, as amended), implemented under subpart 819.70. This program applies to all VA contracts (see FAR 2.101 for the definition of contracts) including Blanket Purchase Agreements (BPAs) and orders against the Federal Supply Schedules (FSS), unless otherwise excluded by law.

Veteran-owned small business (VOSB) has the same meaning as veteran-owned small business concern defined in FAR 2.101, except for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program. These businesses must be listed as verified in the VIP database. A business whose SDVOSB status derives from ownership and control by a surviving spouse shall also be considered a VOSB.

VISN means Veterans Integrated Service Network, an integrated network of VA facilities that are focused on pooling and aligning resources to best meet local needs in the most cost-effective manner and provide greater access to care.

This page intentionally left blank.

SUBCHAPTER A—GENERAL

PART 804—ADMINISTRATIVE MATTERS

Subpart 804.1 – Contract Execution

Sec.
804.101 Contracting officer's signature.

804.1103-70 Vendor Information Pages database.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

This page intentionally left blank.

SUBPART 804.1 – CONTRACT EXECUTION

804.101 Contracting officer's signature.

(a) If a contracting officer's name and title has been typed, stamped, or printed on the contract, and that contracting officer is not available to sign the contract, another contracting officer, as specified in 801.602, may sign the contract.

(b) The contracting officer who signs the contract must have contracting authority to cover the contract to be signed and must annotate his or her name and title below his or her signature.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, deletes VAAR 804.1102, Vendor Information Pages (VIP) Database, and replaces it with VAAR 804.1103-70, Vendor Information Pages (VIP) database, to align with FAR 4.1103 and update the section to reflect the System for Award Management (SAM) which replaced the Central Contractor Registration (CCR). This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

804.1103-70 Vendor Information Pages database.

All service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) participating in the Veterans First Contracting Program must be listed as verified in the Vendor Information Pages (VIP) database at https://www.vip.vetbiz.gov/ at the time of submission of offer/quote to receive contract awards under the Veterans First Contracting Program. Contracting officers shall check the VIP database before evaluating offers or quotes and before making awards to confirm an offeror's status as a verified SDVOSB or VOSB. Contracting officers shall continue to consult the System for Award Management (SAM) to verify the contractor has represented it meets the size standard for the North American Industry Classification System (NAICS) code applicable to the acquisition, per FAR 4.1103.

This page intentionally left blank.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 806—COMPETITION REQUIREMENTS

Sec.

Subpart 806.1 – Full and Open Competition

806.102 Use of competitive procedures.

Subpart 806.2 – Full and Open Competition after Exclusion of Sources

806.203-70 VA set-asides for verified veteran-owned small businesses using the VA rule of two.

Subpart 806.3 – Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.
806.302-5 Authorized or required by statute.
806.302-5-70 Noncompetitive procedures for verified small business concerns owned and controlled by veterans.
806.302-7 Public interest.

Subpart 806.5 – Competition Advocates

806.501 Requirement.
806.570 Planning requirements.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

This page intentionally left blank.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, adds new sections to VAAR part 806 for competitive awards made using the multiple award schedules program of the GSA, including the VA Federal Supply Schedule Program. When a set-aside is restricted to verified SDVOSBs or VOSBs according to the authorities of 819.7005 and 819.7006, such awards constitute full and open competition, after exclusion of sources pursuant to 38 U.S.C. 8127. Thus, this class deviation adds new sections 806.102, 806.203-70 and 806.302-5-70. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

SUBPART 806.1 – FULL AND OPEN COMPETITION

806.102 Use of competitive procedures.

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive. When set-aside for competition restricted to verified service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) according to 819.7005 and 819.7006, such awards constitute full and open competition after exclusion of sources pursuant to 38 U.S.C. 8127.

SUBPART 806.2 – FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

806.203-70 VA set-asides for verified veteran-owned small businesses using the VA Rule of Two.

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127 and 8128), contracting officers shall set aside solicitations for veteran-owned small businesses (see 819.7005 and 819.7006) whenever market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from verified SDVOSBs or VOSBs at fair and reasonable prices that offer best value to the Government (see 819.7005 and 7006).

(b) This requirement applies to all contracts under this subpart, including orders under interagency acquisition vehicles such as FSS, Government-wide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(c) No separate justification or determination and findings are required under this subpart to set aside contracts for SDVOSBs or VOSBs listed as verified in the VIP database.

(d) Contracting officers shall utilize the authority in paragraph (a) over other set-asides authorized in FAR subpart 6.2 whenever market research supports the decision. A set-aside restricted to verified SDVOSBs or VOSBs satisfies competition as well as the fair opportunity requirements (see FAR 16.505(b)(2)(i)(F)).

(e) Subparts 819.5 and 819.70 prescribe policies and procedures that shall be followed with respect to verified SDVOSB and VOSB set-asides.

SUBPART 806.3 – OTHER THAN FULL AND OPEN COMPETITION

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

(a) Full and open competition need not be provided for when awarding:

(1) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302. (38 U.S.C. 7409)

(2) Contracts for health-care resources negotiated under the authority of 38 U.S.C. 8153, but only when such contracts are with institutions affiliated with VA under 38 U.S.C. 7302, including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and 806.304 do not apply to such contracts or agreements. (38 U.S.C. 8153)

(3) Contracts for health-care resources, negotiated under the authority of 38 U.S.C. 8153, that are not acquired under the authority of paragraph (a)(2) of this section, but only when the procurement is conducted in accordance with Part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts and agreements conducted on a sole-source basis. (38 U.S.C. 8153)

(b) Various sections of title 38 U.S.C. authorize the Secretary to enter into certain contracts and certain types of contracts without regard to any other provisions of law. When the contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 253(c)(5) and the following authorities:

(1) For contracts for orthopedic and prosthetic appliances and related services including research, cite 38 U.S.C. 8123. (38 U.S.C. 8123)

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

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

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

(5) For contracts or agreements with public or private agencies for services of translators, cite 38 U.S.C. 513. (38 U.S.C. 513)

(c) Except for an acquisition under paragraph (a)(2) of this section, the contracting officer must provide a justification under FAR 6.303 and obtain an approval under 806.304 for each acquisition described in this section.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, adds new sections to VAAR part 806 for competitive awards made using the multiple award schedules program of the GSA, including the VA Federal Supply Schedule Program. When a set-aside is restricted to verified SDVOSBs or VOSBs according to the authorities of 819.7005 and 819.7006, such awards constitute full and open competition, after exclusion of sources pursuant to 38 U.S.C. 8127. Thus, this class deviation adds new sections 806.302-5-70. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

806.302-5-70 Noncompetitive procedures for verified small business concerns owned and controlled by veterans.

(a) Full and open competition need not be provided for when awarding a sole source contract with a verified SDVOSB or a verified VOSB in accordance with 819.7007 or 819.7008 as authorized. Pursuant to FAR 6.302-5(c)(2)(ii), the justification and approval requirements of FAR 6.303 and 6.304 apply.

(b) Noncompetitive procedures for contracts below the Simplified Acquisition Threshold. When entering into a contract with a verified small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold, a contracting officer may use procedures other than competitive procedures. (Cite: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)).

(c) Sole source contracts above the Simplified Acquisition Threshold. (Cite: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a verified small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed $5 million; and

(2) In the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

806.302-7 Public interest.

(a) When the contracting officer uses 41 U.S.C. 253(c)(7) to support a contract award using other than full and open competition, the contracting officer must prepare a Determination and Finding (D&F) under FAR 1.7 and a justification under FAR 6.303. The D&F must be signed by the Secretary.

(b) The contracting officer must submit the D&F and justification through the HCA to the Agency Competition Advocate for signature by the Secretary. The submission must include the date the contracting officer expects to award the contract.

(c) VA must notify Congress 30 days before the expected award date. The Agency Competition Advocate is responsible for preparing this notice. The contracting officer may not award the contract until notified by the Agency Competition Advocate.

[Deviation per Class Deviation—806.304, Approval of the Justification (VAIQ 7716829), dated August 8, 2016 deletes 806.304 and justifications shall be approved in accordance with the approving officials and thresholds specified in FAR 6.304. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

806.304 [Reserved].

SUBPART 806.5 – COMPETITION ADVOCATES

[Deviation per Class Deviation—806.501, Requirements (VAIQ 7640739), dated December 3, 2015, clarifies language in reference to providing the Deputy Senior Procurement Executive the ability to further delegate the Advocate for Competition authority. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

806.501 Requirement.

The Deputy Senior Procurement Executive (DSPE) is designated as the Agency Advocate for Competition. The DSPE may further delegate this authority to other VA procurement officials.

806.570 Planning requirements.

(a) Each Contracting Activity Competition Advocate must do the following:

(1) Develop a Competition Plan.

(2) Incorporate the Plan in the internal operating procedures of the facility or organization in which the contracting activity is located.

(3) Obtain the endorsement and support of the facility or staff office director.

(4) Ensure that the services and offices that the contracting activity supports understand the plan.

(b) At a minimum, the Competition Plan must include the following:

(1) Approval requirements for other than full and open competition specified in FAR 6.304.

(2) A description of the synopsis requirements in FAR subpart 5.2 to ensure that responsible staff fully understand the advance procurement planning that is required.

(3) A description of how to integrate the Competition Plan into advance procurement planning.

(4) A listing of obstacles to competition and a proposal for overcoming them.

(5) A method for increasing cost competition for contracts and competition on other significant factors.

This page intentionally left blank.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
808.002 Priorities for use of mandatory Government supply sources.
808.004-70 Use of non-mandatory sources by VA.

Subpart 808.4 – Federal Supply Schedules

808.402 General.
808.404-70 Use of Federal Supply Schedules—the Veterans First Contracting Program.
808.405-2 Ordering procedure for services requiring a statement of work.
808.405-70 VA Rule of Two ordering procedures for Federal Supply Schedules—the Veterans First Contracting Program.
808.405-5-70 Small business set-asides—the Veterans First Contracting Program.

Subpart 808.6 – Acquisition from Federal Prison Industries, Inc. (FPI)

808.603 Purchase priorities

Subpart 808.8 – Acquisition of Printing and Related Supplies

808.802 Policy.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

This page intentionally left blank.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016) dated July 25, 2016, Attachment 4, rescinds class deviation—VAAR part 808 dated May 5, 2016, and deviates from the existing eCFR VAAR. It moves VA mandatory contract vehicles to VAAR 808.004-70 as non-mandatory, while retaining priority over other existing contract vehicles. This class deviation also adds VAAR 808.002, 808.004-70, 808.404-70, 808.405-2 and 808.405-70 to fully implement the VFCP as it relates to VAAR part 808, Required Sources of Supplies and Services including the Federal Supply Schedules (see Attachment 4). This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per Class Deviation (Revised)—Implementation of the Veterans First Contracting Program (VFCP) as a Result of the U.S. Supreme Court Decision, dated 1 March 2017, Attachment 4, Amendment 01 amends "Attachment 4" of the previous deviation, VAAR 808.002, Priorities for use of mandatory Government sources, in relation to the VFCP, to provide further clarification, authority, and guidance to contracting officers pertaining to VAAR 808.002 only. The remainder of the VFCP 2016 Class Deviation, Attachment 4, remains in effect.]

808.002 Priorities for use of mandatory Government sources.

(a)(1) Supplies.

(i) VA inventories including the VA supply stock program (41 CFR 101-26.704) and VA excess.

(ii) Excess from other agencies (see FAR subpart 8.1).

(iii) Federal Prison Industries, Inc. (see FAR subpart 8.6 and VAAR 808.603).

(iv) *Supplies on the Procurement List* maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7).

(A) Supplies on the Procurement List are mandatory only if:

(1) The supplies were added to the Procurement List prior to January 7, 2010, and the date the supplies were added is readily available; or

(2) The supplies were added to the Procurement List on or after January 7, 2010, the VA Rule of Two (see VAAR Class Deviation 802.101 definition) was applied prior to the addition of the supplies to the Procurement List, and that information is readily available.

(B) The VA Rule of Two must be applied prior to VA requesting addition of new supplies to the Procurement List. On or after January 7, 2010, if supplies were added to the Procurement List at the request of an agency other than the VA, the VA Rule of Two will be applied prior to VA purchasing the supplies from the Procurement List.

(C) When the VA Rule of Two is not satisfied and award to eligible SDVOSBs/VOSBs (pursuant to VAAR subpart 819.70) will not occur, the priority use of AbilityOne in accordance with FAR 8.002 applies.

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), , and military inventory control points.

(2) Services. Services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7).

(A) Services on the Procurement List are mandatory only if:

(1) The services were added to the Procurement List prior to January 7, 2010, and the date the services were added is readily available; or

(2) The services were added to the Procurement List on or after January 7, 2010, the VA Rule of Two (see VAAR Class Deviation 802.101 definition) was applied prior to the addition of the services to the Procurement List, and that information is readily available.

(B) The VA Rule of Two must be applied prior to VA requesting addition of new services to the Procurement List. On or after January 7, 2010, if services were added to the Procurement List at the request of an agency other than the VA, the VA Rule of Two will be applied prior to VA purchasing services from the Procurement List.

(C) When the VA Rule of Two is not satisfied and award to eligible SDVOSBs/VOSBs (pursuant to VAAR subpart 819.70) will not occur, the priority use of AbilityOne in accordance with FAR 8.002 applies.

(b) Unusual and compelling urgency. The contracting officer may use a source lower in priority than as specified in FAR 8.002 and VAAR 808.002 when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302-2 and FAR 8.405-6).

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use**.**

808.004-70 Use of non-mandatory sources by VA.

(a) In order to fulfill the requirements of 38 U.S.C. 8127 and 8128 (see subpart 819.70), contracting officers shall award contracts (see FAR 2.101 for the definition of contracts), including Blanket Purchase Agreements (BPAs) and orders against Federal Supply Schedules (FSS) and provide priority in the awarding of contracts to verified SDVOSBs or VOSBs. Contracting officers shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70.

(b) *VA strategic sourcing priorities and application of the VA Rule of Two*. To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (prime-vendor and VA FSS). Contracting officers shall consider the prime-vendor and VA FSS contract vehicles before using other existing contract vehicles.

(c) When considering set-asides for verified SDVOSBs/VOSBs against existing contract vehicles, contracting officers shall—

(1) Search the VIP database by applicable North American Industry Classification System (NAICS) code(s);

(2) Determine if two or more verified SDVOSBs/VOSBs are listed by the NAICS code(s);

(3) Determine 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.

(4) If criteria in (c)(1-3) are met, and if the existing contract vehicle represents, in the judgement of the contracting officer, the best business choice, the contracting officer shall set aside the requirement in the contracting order of priority (see 819.7005 and 819.7006) using the applicable provision and clause at 819.7009.

(5) If the contracting officer determines existing contract vehicles are not suitable for award of a set-aside, an open market set-aside should be pursued.

SUBPART 808.4 – FEDERAL SUPPLY SCHEDULES

808.402 General.

The Executive Director and Chief Operating Officer, VA National Acquisition Center, advertises, negotiates, awards, administers, and issues the Federal Supply Schedules for Federal Supply Classification Groups 62, 65, and 89 and for cost-per-test services under Group 66.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, rescinds class deviation—VAAR part 808 dated May 5, 2016 and moves VA mandatory contract vehicles to VAAR 808.004-70 as non-mandatory, while retaining priority over other existing contract vehicles. This class deviation adds VAAR 808.002, 808.004-70, 808.404-70, 808.405-2, 808.405-70 and 808.405-5-70 to fully implement the Veterans First Contracting Program as it relates to VAAR part 808, Required Sources of Supplies and Services, including the Federal Supply Schedules. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

808.404-70 Use of Federal Supply Schedules—the Veterans First Contracting Program.

(a) General. The Veterans First Contracting Program implemented in subpart 819.70 pursuant to 38 U.S.C 8127 and 8128 applies to VA contracts, BPAs, and orders under FAR 8.4 and has precedence over other small business programs.

(b)(1) Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer will consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities will be followed by preferences for other small businesses in accordance with FAR 19.203, 819.203-70 and 819.7004.

(2) Set-asides for verified SDVOSBs and VOSBs are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more offers at a fair and reasonable price that offers best value to the Government. This mandate applies to contracting officers issuing BPAs and placing orders against the FSS. Because only verified SDVOSBs and VOSBs can participate on such set-asides, the contracting officer should start by reviewing verified firms in the VIP database, then determine if there is an existing contract vehicle (with priority preference for VA prime-vendor, national and VA FSS contracts) that is most appropriate. The VA Rule of Two for SDVOSBs and VOSBs, in that order, shall be applied in all instances. A set-aside restricted to

verified SDVOSBs or VOSBs under 819.70 satisfies the competition requirement in the FAR.

(c) When the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with FAR subpart 17.5 and subpart 817.5 and includes terms requiring compliance with the VA Rule of Two (see 817.501).

808.405-2 Ordering procedures for services requiring a statement of work.

See 808.405-70 for SDVOSB/VOSB set-aside requirements and the use of evaluation preferences when a set aside is not feasible.

808.405-70 VA Rule of Two ordering procedures for Federal Supply Schedules—the Veterans First Contracting Program.

Contracting officers shall use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services. When a policy in another part of the FAR is inconsistent with a policy in this part and FAR 8.405, this subpart 808.4 shall take precedence for acquisitions against the FSS.

(a) Pursuant to 38 U.S.C. 8127, contracting activities shall set aside BPAs and orders for SDVOSBs or VOSBs when indicated by market research. The set-aside authorities of 819.7005 and 819.7006 are mandatory whenever the contracting officer has a reasonable expectation of receiving two or more competitive offers/quotes at fair and reasonable prices that offer best value to the Government from SDVOSBs or VOSBs listed as verified in the VIP database.

(1) When setting aside BPAs and orders against the FSS, the eligibility requirements of 819.7003, 819.7005, and 819.7006 apply, including the requirement for offerors to be verified to submit offers/quotes or receive awards. To ensure fair and reasonable prices that offer best value to the Government and compliance with other requirements, the contracting officer shall—

(i) Notify potential offerors of the unique VA verification requirements by including the applicable set-aside clause prescribed at 819.7009.

(ii) Post the RFQ on e-Buy to afford all verified SDVOSB or VOSB schedule contractors, depending on the set-aside, offering the required supplies or services under the appropriate multiple award schedule(s) an opportunity to submit a quote; or

(iii) Provide the RFQ to as many verified SDVOSB or VOSB schedule contractors as practicable, depending on the set-aside, consistent with market research appropriate to the circumstances. The requirements in FAR 8.405-1, 8.405-2 and 8.405-3, apply, except only verified SDVOSBs or VOSBs, will be considered.

(b) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting activity shall give priority to SDVOSBs/VOSBs through the use of evaluation preferences, as provided in 815.304. The contracting activity, when developing a statement of work and any evaluation criteria in addition to price, shall adhere to and apply the evaluation factor commitments at 815.304-70.

(c) The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including verification of the SDVOSB and VOSB status at the time of submission of offer/quote and prior to award. The offeror must also represent that it meets the small business size standard for the assigned NAICS and other small business requirements (e.g. non-manufacturer rule and limitations on subcontracting).

808.405-5-70 Small business set-asides—the Veterans First Contracting Program.

When issuing BPAs or placing orders against the FSS, the contracting officer shall restrict competition to small businesses owned and controlled by veterans, when market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from verified SDVOSBs or VOSBs and award can be made at a fair and reasonable price that offers best value to the Government.

SUBPART 808.6 – ACQUISITIONS FROM FEDERAL PRISON INDUSTRIES, INC. (FPI)

808.603 Purchase priorities.

Contracting officers may purchase supplies and services produced or provided by FPI from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with procedures set forth in subpart 819.70, without seeking a waiver from FPI, in accordance with 38 U.S.C. 8128, Small business concerns owned and controlled by veterans: Contracting priority.

SUBPART 808.8 – ACQUISITION OF PRINTING AND RELATED SUPPLIES

808.802 Policy.

The Director, Publications Staff, Office of Acquisition and Materiel Management, VA Central Office, is the Central Printing Authority for VA (see FAR 8.802(b)).

This page intentionally left blank.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1 – Responsible Prospective Contractors

Sec.
809.104 Standards.
809.104-2 Special standards.
809.106 Pre-award surveys.
809.106-1 Conditions for pre-award surveys.

Subpart 809.2 – Qualifications Requirements

809.201 Definitions.
809.202 Policy.
809.204 Responsibilities for establishment of a qualification requirement.
809.206 Acquisitions subject to qualification requirements.
809.206-1 General.
809.270 Qualified products for convenience/labor-saving foods.

Subpart 809.4 – Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.
809.402 Policy.
809.405 Effect of listing.
809.405-1 Continuation of current contracts.
809.405-2 Restrictions on subcontracting.
809.406 Debarment.
809.406-1 General.
809.406-2 Cause for debarment.
809.406.3 Procedures.
809.406-4 Period of debarment.
809.407 Suspension.
809.407-1 General.
809.407-3 Procedures.
809.470 Fact-finding procedures.

Subpart 809.5 – Organizational and Consultant Conflicts of Interest

809.503 Waiver.
809.504 Contracting officer responsibilities.
809.507 Solicitation provisions and contract clause.
809.507-1 Solicitation provisions.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

This page intentionally left blank.

SUBPART 809.1 – RESPONSIBLE PROSPECTIVE CONTRACTORS

809.104 Standards.

809.104-2 Special standards.

(a) For a pre-award survey prescribed by 809.106-1, a contracting officer must develop special standards of sanitation applicable to the acquisition of subsistence and services prescribed by 809.106-1(a).

(b) An appropriate specialist will assist the contracting officer in developing the special standards under paragraph (a) of this section.

809.106 Pre-award surveys.

809.106-1 Conditions for pre-award surveys.

(a) Except as provided in paragraphs (b) through (e) of this section, a committee under the direction of the contracting officer and composed of representatives of the medical service or using service chiefs or designees appointed by the facility or VISN director will conduct a pre-award on-site evaluation of the plant, personnel, equipment and processes of the prospective contractor for contracts covering the products and services of the following:

(1) Bakeries.

(2) Dairies.

(3) Ice cream plants.

(4) Laundry and dry cleaning activities.

(b) Before any inspection, the contracting officer will determine whether another VA facility or another Federal agency has recently inspected and approved the plant.

(1) The contracting officer will accept an approved inspection report of another VA facility.

(2) If another Federal agency made a plant inspection not more than 6 months before the proposed VA contract period, the contracting officer may accept an approved inspection report of that other Federal agency as satisfactory evidence that the facilities of the bidder meet the bid requirements.

(c) VA will not conduct a pre-award on-site evaluation of a dairy plant when VA receives an acceptable bid from a supplier of dairy products designated as No.1 in the Federal Specifications if the following conditions are met:

(1) The supplier has received a pasteurized milk rating of 90 percent or more for the type of product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code.

(2) The rating is current (not over 2 years old) and has been determined by a certified State milk sanitation rating officer in the State of origin or by the Public Health Service. The contractor must maintain the rating of 90 percent or more during the period of the contract.

(3) The solicitation specifications must include the requirements in paragraphs (c)(1) and (2) of this section.

(d) A dairy plant that does not meet paragraph (c) of this section may offer only dairy products designated as No. 2 in the Federal Specifications. VA will make an award to such a firm only after it completes a pre-award on-site evaluation conducted under paragraph (a) of this section.

(e) Before it makes an open market purchase of fresh bakery products (such as pies, cakes, and cookies), VA will inspect and evaluate the plant where these products are produced or prepared under paragraph (a) of this section. VA will make an on-site evaluation at least annually and record the results on VA Form 10-2079, Inspection Report of Bakery.

SUBPART 809.2 – QUALIFICATIONS REQUIREMENTS

809.201 Definitions.

For the purposes of this subpart:

VA QPL means a VA Qualified Products List, a list of products qualified by the VA under VA specifications, or purchase descriptions, or commercial item descriptions.

VISN QPL means a VISN Qualified Products List, a list of products qualified by a VISN under VA specifications, or purchase descriptions, or commercial item descriptions.

809.202 Policy.

The HCA may sign a justification required by FAR 9.202(a)(1).

809.204 Responsibilities for establishment of a qualification requirement.

(a) Under FAR Subpart 9.2, VA may create VA QPLs for use on individual solicitations or on multiple solicitations issued by one or more VA facilities.

(b) An HCA or designee must support the creation of a VA QPL using one or more of the following justifications:

(1) The time required for testing the product after award would unduly delay product delivery.

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

(3) Testing the product would require purchasing an expensive or complicated apparatus not commonly available.

(4) It is in the Government's interest to be assured before contract award that the product is satisfactory for its intended use.

(5) Determining acceptability would require providing product performance data to supplement technical requirements in the specification.

(6) Conducting a test would result in substantial or repetitive rejections.

(7) VA cannot economically develop clear, professional specifications for the product performance, balance, design, or construction, and professional judgment is required to determine whether the product is acceptable under VA requirements.

(c) If VA plans to establish a VA QPL for any given product, the contracting officer may limit known suppliers to suppliers whose products are covered by a Federal Supply Schedule contract, as provided at FAR Subpart 8.4.

(d) VA will pay the costs to inspect and test a product sample submitted under this section.

(1) The product supplier must pay for the sample and its transportation to the place of inspecting and testing.

(2) After inspection and testing, VA will return any product sample to the supplier "as is" unless:

(i) The inspection or test destroys the sample; or

(ii) The supplier authorizes VA to retain or dispose of the sample.

(e) Once VA accepts a product for the VA QPL, VA may review the product for compliance with the applicable specification at any time.

(1) Where there is a variance between a VA specification that was the basis for the VA QPL and the product furnished by the supplier, the supplier must furnish an item that conforms to the VA specification.

(2) If the supplier fails to or is unable to provide a product that conforms to the applicable VA specification, the product will be removed from the VA QPL.

(f) VA's acceptance of a product for listing on the VA QPL does not:

(1) Guarantee that VA will accept the product in any future purchase; or

(2) Constitute a waiver of the specifications as to acceptance, inspection, testing, or other provisions of any future contract involving the product.

809.206 Acquisitions subject to qualification requirements.

809.206-1 General.

The HCA may determine that an emergency exists, as provided in FAR 9.206-1(b).

809.270 Qualified products for convenience/labor-saving foods.

(a) Each VISN Nutrition and Food Service representative is authorized to establish a common VISN QPL for convenience and labor-saving foods for use at medical facilities within the representative's VISN.

(1) The VISN Nutrition and Food Service representative must notify the Director, Nutrition and Food Service, VA Central Office, of the establishment or amendment of any VISN QPL.

(2) To avoid unnecessary duplication within a VISN, for medical facilities using an applicable VISN QPL under paragraph (b) of this section, the VISN Nutrition and Food Service representative must coordinate and consolidate test results and recommendations.

(b) Each medical facility may:

(1) Use its VISN QPL; and

(2) Test food of its choice, provided that the facility submits test results to the VISN Nutrition and Food Service representative.

(c) The VISN representative must provide a copy of each approved VISN QPL to the following:

(1) Each contracting office in the VISN.

(2) The Director, Nutrition and Food Service, VA Central office.

(3) Upon request, the Office of Acquisition and Materiel Management, VA Central Office.

SUBPART 809.4 – DEBARMENT, SUSPENSION, AND INELIGIBILITY

[Deviation per Class Deviation—from VA Acquisition Regulation (VAAR) Section 802.101, Definitions, and Subpart 809.4, Debarment, Suspension and Ineligibility, dated June 2, 2017, rescinds Class Deviation from VA Acquisition Regulation (VAAR) VAAR 802.101, Definitions, and from 809.400, Debarment, Suspension and Ineligibility," dated April 30, 2015; the deviation implements specific processes and criteria pursuant to 38. U.S.C. 8127(g), and updates VA's policies and procedures for suspensions and debarments. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

809.400 Scope of subpart.

This subpart supplements the FAR provisions concerning procedures and related actions for the suspension and debarment of contractors.

809.402 Policy.

(a) When VA is considering a debarment or suspension action, the Suspension and Debarment (S&D) Committee shall coordinate the action with the Interagency Suspension and Debarment Committee (ISDC) to identify other agencies with an interest in the action and to identify the agency that will take the lead on the action.

(b) The S&D Committee shall provide the designated lead agency with any information relevant to the action for consideration in the decision making process.

(c) The S&D Committee shall maintain coordination with the appropriate lead agency official through completion of a final suspension or debarment decision.

(d) The S&D Committee shall accomplish the actions described in FAR 9.404(c).

809.405 Effect of listing.

The authority under FAR 9.405(a), 9.405(d)(2), and 9.405(d)(3) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors with active exclusions in the System for Award Management (SAM) is delegated to the Suspending and Debarring Official (SDO).

809.405-1 Continuation of current contracts.

(a) Notwithstanding the suspension, proposed debarment, or debarment of a contractor, VA may continue contracts or subcontracts in existence at the time the contractor was suspended, proposed for debarment, or debarred, unless the cognizant Head of the Contracting Activity (HCA) directs otherwise. Examples of factors to be considered include, but are not limited to, potential costs associated with a termination, possible disruption to VA program objectives, and integrity of VA acquisition programs.

(b) Authority to make the determinations under FAR 9.405-1(b) is delegated to the SDO. The SDO further delegates this authority to the HCAs. HCAs must make a written determination of the compelling reasons in accordance with FAR 9.405-1(b). Compelling reasons for the purposes of FAR 9.405-1(b) include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources, and meeting estimated quantity for requirements contracts.

809.405-2 Restrictions on subcontracting.

Authority to make the written determination required under FAR 9.405-2 consenting to a contractor's use of a subcontractor who is suspended, proposed for debarment, or debarred is delegated to the SDO. The SDO further delegates this authority to the HCAs.

809.406 Debarment.

809.406-1 General.

(a) As provided in FAR 9.406-1(c), the authority to determine whether to continue business dealings between VA and a contractor suspended, proposed for debarment, or debarred is delegated to the SDO.

(b) For the purposes of FAR 9.406-1, the SDO's authority includes debarments pursuant to the Federal Management Regulation at 41 CFR 102-117.295.

(c) In addition to the factors listed in FAR 9.406-1, the SDO should consider the following examples before arriving at a debarment decision:

(1) Whether the contractor had a mechanism, such as a hotline, by which employees could have reported suspected instances of improper conduct, and instructions in place that encouraged employees to make such reports; or

(2) Whether the contractor conducted periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting.

809.406-2 Causes for debarment.

(a) In addition to the causes listed in FAR 9.406-2, the SDO may debar contractors, based upon a preponderance of the evidence, for

(1) Misrepresentation of Veteran-owned small business (VOSB) or service-disabled, Veteran-owned small business (SDVOSB) status; or

(2) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under subpart 819.70.

(b) The SDO shall debar for a period of not less than five years, pursuant to 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, any business concern that has willfully and intentionally misrepresented the status of that concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans pursuant to this subsection.

(1) "Willful and intentional" misrepresentations, for the purpose of debarment actions taken pursuant to subsection (b), are defined as misrepresentations concerning the status of the concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans resulting in an admission, criminal conviction, civil judgment, or administrative decision related to fraud or other criminal acts.

(2) Debarment of a business concern pursuant to subsection (b) shall include the debarment of all principals in the business concern. Debarment shall be for a period of not less than five years.

809.406-3 Procedures.

(a) Any individual may submit a referral to debar an individual or contractor to the SDO or to the S&D Committee. The referral for debarment shall be supported with evidence of a cause for debarment listed in FAR 9.406-2, or VAAR 809.406-2. The SDO shall forward referrals for debarment to the S&D Committee. If the referring individual is a VA employee and the referral for debarment is based on possible criminal or fraudulent activities, the VA employee shall also refer the matter to the VA Office of Inspector General.

(b) When the S&D Committee finds preponderance of the evidence for a cause for debarment, as listed in FAR 9.406-2 or VAAR 809.406-2, it shall prepare a recommendation and draft notice of proposed debarment for the SDO's consideration.

(c) VA shall send the notice of proposed debarment to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery. In the case of a contractor, VA may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The S&D Committee concurrently shall list the appropriate parties as excluded in the System for Award Management (SAM) in accordance with FAR 9.404.

(d) If VA does not receive a reply from the contractor within 30 days after sending the notice of proposed debarment, the S&D Committee shall prepare a recommendation and refer the case to the SDO for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 30 days after sending the notice of proposed debarment, the S&D Committee shall consider the information in the reply before the S&D Committee makes its recommendation to the SDO.

(f) The S&D Committee, upon the request of the contractor proposed for debarment, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. VA shall conduct the proceeding in an informal manner and without requirement for a transcript.

(g) If the S&D Committee finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a

genuine dispute of material facts, the SDO shall refer the dispute to a designee for resolution pursuant to 809.470, Fact-finding procedures. The S&D Committee shall provide the contractor or individual the disputed material fact(s). Decisions and determinations of VA's CVE or OSDBU, such as status protest decisions, and size determinations of the SBA shall not be subject to dispute or fact-finding in proposed debarment actions. The S&D Committee and SDO shall accept these decisions and determinations as resolved facts.

(h) If the proposed debarment action is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 809.470, Fact-finding procedures, the SDO shall make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written arguments presented or submitted to the S&D Committee by the contractor.

(i) In actions processed under FAR 9.406 where no suspension is in place and where fact finding is not required, VA shall make the final decision on the proposed debarment within 30 working days after receipt of any information and argument submitted by the contractor, unless the SDO extends this period for good cause.

(j) In actions processed under VAAR 809.406-2(b), the SDO notifies the individuals and/or contractors of the determination of willful and intentional misrepresentation in the notice of proposed debarment. VA shall issue the final decision, removing or upholding the determination, within 90 days after the SDO's determination of willful and intentional misrepresentation.

809.406-4 Period of debarment.

(a) The SDO will base the period of debarment on the circumstances surrounding the cause(s) for debarment.

(b) The SDO may remove a debarment imposed under FAR 9.406, amend its scope, or reduce the period of debarment based on a S&D Committee recommendation if:

(1) VA has debarred the contractor;

(2) The action is indicated after the SDO reviews documentary evidence submitted by or on behalf of the contractor setting forth the appropriate grounds for granting relief. Appropriate grounds include newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, elimination of the cause for which debarment was imposed, or any other appropriate grounds.

(c) The period of debarment for willful and intentional misrepresentations of SDVOSB or VOSB status pursuant to VAAR 809.406-2(b) shall not be less than 5 years.

809.407 Suspension.

809.407-1 General.

(a) As provided in FAR 9.407-1(d), the authority to determine whether to continue business dealings between VA and a suspended contractor is delegated to the HCAs. Compelling reasons include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources, and meeting estimated quantities for requirements contracts.

(b) For the purposes of FAR 9.407-1, the SDO is the suspending official under the Federal Management Regulation at 41 CFR 102-117.295.

809.407-3 Procedures.

(a) Any individual may submit a referral to suspend an individual or contractor to the SDO or to the S&D Committee. Referrals shall include supporting evidence of a cause for suspension listed in FAR 9.407-2. The SDO shall forward the referral to the S&D Committee. If the referring individual is a VA employee and the referral for suspension is based on possible criminal or fraudulent activities, the VA employee shall also refer the matter to the VA Office of Inspector General.

(b) When the S&D Committee finds adequate evidence of a cause for suspension, as listed in FAR 9.407-2, it shall prepare a recommendation and draft notice of suspension for the SDO's consideration.

(c) VA shall send the notice of suspension to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery. In the case of a contractor, VA may send the notice of suspension to any partner, principal, officer, director, owner or co-owner, or joint venture. The S&D Committee concurrently shall list the appropriate parties as excluded in the System for Award Management (SAM) in accordance with FAR 9.404.

(d) If VA receives a reply from the contractor within 30 days after sending the notice of suspension, the S&D Committee shall consider the information in the reply before the Committee makes further recommendations to the SDO. The S&D Committee, upon the request of a suspended contractor, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript.

(e) For the purposes of FAR 9.407-3(b)(2), Decision making process, in actions not based on an indictment, if the S&D Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. However, the S&D Committee may first coordinate any further proceeding regarding the material facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA shall take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA in writing that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the SDO agrees that there is a genuine dispute of material facts, the SDO shall refer the dispute to the designee for resolution pursuant to 809.470.

809.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of material fact pursuant to 809.406-3 and 809.407-3 of this chapter. The SDO shall appoint a designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The proceedings before the fact-finder will be limited to a finding of the material facts in dispute, as determined by the SDO. The fact-finder shall establish the date for the fact-finding hearing, normally to be held within 30 days after the S&D Committee notifies the contractor or individual that the SDO has established a genuine dispute of material fact(s) exists.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the material fact(s) identified by the SDO. The contractor or individual may appear in person or through a representative at the fact-finding hearing. The contractor or individual may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact- finder, by mutual agreement, waive the requirement for a transcript.

(d)The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence for proposed debarments, and by adequate evidence for suspensions. Written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the SDO, the Government's representative, and the contractor or individual. The SDO will consider the written findings of fact in the decision regarding the suspension or proposed debarment.

SUBPART 809.5 – ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

809.503 Waiver.

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

809.504 Contracting officer responsibilities.

(a) A contracting officer must determine whether awarding a contract will result in an actual or potential conflict of interest for the contractor.

(1) The contracting officer will make a conflict of interest determination after reviewing information submitted by offerors, evaluating information gathered under FAR 9.506, and exercising his or her own judgment.

(2) In evaluating possible organizational conflicts of interest, the contracting officer may obtain the advice of legal counsel and the assistance of technical specialists.

(b) If the contracting officer determines that there is no way to avoid or mitigate an organizational conflict of interest arising from a contract award, the contracting officer may disqualify the offeror from award under FAR 9.504(e).

(c) Even if awarding a contract will result in an organizational conflict of interest, the contracting officer may request a waiver from his or her HCA if awarding the contract is in the best interests of the Government.

(1) Before granting a waiver request under this paragraph, the HCA must obtain the concurrence of OGC.

(2) If the HCA grants a waiver request, the contracting officer may set contract terms and conditions to reduce any organizational conflict of interest to the greatest extent possible.

(d) In any solicitation for the services addressed at FAR 9.502, the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see 809.507-1(b) and 852.209-70).

809.507 Solicitation provisions and contract clause.

809.507-1 Solicitation provisions.

(a) While conflicts of interest may not presently exist, award of certain types of contracts may create potential future organizational conflicts of interest (see FAR 9.508 for examples). If a solicitation may create a potential future organizational conflict of interest, the contracting officer shall insert a provision in the solicitation imposing an appropriate restraint on the contractor's eligibility for award of contracts in the future. Under FAR 9.507-1, the restraint must be appropriate to the nature of the conflict and may exclude the contractor from award of one or more contracts in the future.

(b) The clause at 852.209-70, Organizational conflicts of interest, must be included in any solicitation for the services addressed in FAR 9.502.

This page intentionally left blank.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 810—MARKET RESEARCH

Sec.

810.001-70 Market research policy.
810.002 Market research procedures.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

This page intentionally left blank.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), provides an updated website for the VIP database and adds new policy at VAAR 810.001-70. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

810.001-70 Market research policy.

When performing market research, contracting officers shall review the Vendor Information Pages (VIP) database at https://www.vip.vetbiz.gov as required by subpart 819.70. The contracting officer will search 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. The contracting officer will determine 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. If so, the contracting officer shall set-aside the requirement in the contracting order of priority (see 819.7005 and 819.7006).

810.002 Market research procedures.

Contracting officers shall record VIP queries in the solicitation file by printing the results of the search(s) along with specific query used to generate the search(s).

This page intentionally left blank.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 812.1 – Acquisition of Commercial Items – General

Sec.
812.102 Applicability.
812.102-70 Applicability of veterans preferences.

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

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

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

This page intentionally left blank.

SUBPART 812.1 – ACQUISITION OF COMMERCIAL ITEMS – GENERAL

812.102 Applicability.

(a) This part shall be used for the acquisition of supplies and services that meet the definition of commercial items at FAR 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for the solicitation, evaluation, and award prescribed in Parts 813, Simplified Acquisition Procedures, 814, Sealed Bidding, and 815, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies of other parts of this chapter. When a policy in another part of this chapter differs from a policy in this part, this Part 812 applies to the acquisition of commercial items.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, clarifies that when a policy in VAAR part 819 differs from a policy in VAAR part 812, the policies in VAAR subpart 819.70 will apply. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

812.102-70 Applicability of veterans preferences.

Based on the authority under 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program in subpart 819.70 applies to VA contracts under this part. When a policy in FAR part 12 or VAAR part 812 is inconsistent with a policy in subpart 819.70, the policy in subpart 819.70 takes precedence.

SUBPART 812.3 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

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

(a) Regardless of provisions in other parts of the VAAR, contracting officers may use, as appropriate, only those provisions and clauses referred to in this part when acquiring commercial items.

(b) Contracting officers may use the provisions and clauses in the following VAAR sections, as appropriate and in accordance with the prescriptions for the provisions and clauses, in requests for quotations, solicitations, and contracts:

(1) 852.203-70, Commercial advertising.

(2) 852.203-71, Display of Department of Veterans Affairs Hotline poster.

(3) 852.207-70, Report of employment under commercial activities.

(4) 852.209-70, Organizational conflicts of interest.

(5) 852.211-71, Special notice.

(6) 852.211-72, Technical industry standards.

(7) 852.211-73, Brand name or equal.

(8) 852.211-75, Product specifications.

(9) 852.214-70, Caution to bidders—bid envelopes.

(10) 852.214-71, Restrictions on alternate item(s).

(11) 852.214-72, Alternate item(s).

(12) 852.214-73, Alternate packaging and packing.

(13) 852.214-74, Bid samples.

(14) 852.216-70, Estimated quantities.

(15) 852.228-71, Indemnification and insurance.

(16) 852.229-70, Sales and use taxes.

(17) 852.233-70, Protest content/alternative dispute resolution.

(18) 852.233-71, Alternate protest procedure.

(19) 852.237-7, Indemnification and medical liability insurance.

(20) 852.237-70, Contractor responsibilities.

(21) 852.246-70, Guarantee.

(22) 852.246-71, Inspection.

(23) 852.246-72, Frozen processed foods.

(24) 852.252-70, Solicitation provisions or clauses incorporated by reference.

(25) 852.270-1, Representatives of contracting officers.

(26) 852.270-2, Bread and bakery products—quantities.

(27) 852.270-3, Purchase of shellfish.

(28) 852.271-72, Time spent by counselee in counseling process.

(29) 852.271-73, Use and publication of counseling results.

(30) 852.271-74, Inspection.

(31) 852.271-75, Extension of contract period.

(c) When appropriate in accordance with the prescriptions for the clauses, the contracting officer may use the clauses in the following VAAR sections in requests for quotations, solicitations, and contracts for the acquisition of commercial items if the contracting officer determines that the use is consistent with customary commercial practices:

(1) 852.211-70, Service data manuals.

(2) 852.211-74, Liquidated damages.

(d) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the clause at 852.271-70, Nondiscrimination in services provided to beneficiaries.

(e) Micro-purchases that use the procedures of this part in conjunction with part 813 do not require clauses unless the contracting officer determines that the use of clauses serves the Government's best interest.

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

(1) 852.273-70, Late offers.

(2) 852.273-71, Alternative negotiation techniques.

(3) 852.273-72, Alternative evaluation.

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

(5) 852.273-74, Award without exchanges.

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

(a) Contracting officers may tailor solicitations to be inconsistent with customary commercial practice if they prepare and obtain approval of a waiver under paragraph (c) of this section.

(b) The contracting officer must prepare the waiver in accordance with FAR 12.302(c). The waiver is subject to the tailoring prohibitions in FAR 12.302(b)(1) through 12.302(b)(6).

(c) The contracting officer must obtain approval for waivers from the following:

(1) The Chief, Acquisition Assistance Division, for individual contracts.

(2) The Chief, Acquisition Program Management Division, for a class of contracts.

(d) Contracting officers must submit waiver requests no later than the solicitation issue date.

(e) Contracting officers must retain approved requests in the contract file.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
813.003-70 Policy.

Subpart 813.1 – Procedures

813.102 Source list.
813.106-3 Award and documentation.
813.106-70 Oral purchase orders.

Subpart 813.2 – Actions at or Below the Micro-Purchase Threshold

813.203 Purchase guidelines.

Subpart 813.3 – Simplified Acquisition Methods

813.302 Purchase orders.
813.302-5 Clauses.
813.307 Forms.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

This page intentionally left blank.

SUBPART 813.1 – PROCEDURES

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, changes VAAR part 813 by adding VAAR 813.003-70. The deviations are necessary to reflect the Veterans First Contracting Program in subpart 819.70 as it applies to VA contract actions under VAAR part 813. VAAR subpart 819.70 has precedence over other small business programs in FAR part 19. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

813.003-70 Policy.

(a) General. The Veterans First Contracting Program in subpart 819.70 applies to VA contracts (see FAR 2.101, Definitions) under this part and has precedence over other small business programs referenced in FAR part 19.

(b) Notwithstanding FAR 13.003(b)(2), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart 819.70. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with FAR 19.203, 819.203-70 and 819.7004.

(c) When using competitive procedures, the preference for restricting competition to verified SDVOSBs or VOSBs is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified SDVOSBs or VOSBs at fair and reasonable prices that offer best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs or VOSBs, when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at 819.7009.

(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at 815.304 and the evaluation criteria clause prescribed at 815.304-71(a).

(d) The SDVOSB and VOSB eligibility requirements in part 819.7003 apply, including verification of the SDVOSB and VOSB status of an offeror or awardee at the time of submission of offer/quote and prior to award. The offeror must also represent that it meets the small business size standard for the assigned North American Industry Classification Code System (NAICS) code and other small business requirements in FAR part 19 (e.g. subcontracting limitations and non-manufacturer rule).

813.102 Source list.

(a) Pursuant to 819.7002, contracting officers shall use the Vendor Information Pages (VIP) database to verify SDVOSB/VOSB status.

813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

(a) Contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount exceeds the micropurchase threshold up to $5 million.

(b) Requirements exceeding $25,000 must be synopsized in accordance with FAR Part 5.

813.106-3 Award and documentation.

The contracting officer may record a quotation on an Abstract of Offers (SF 1409 or 1419), the purchase request if space permits, or other supplemental sheet or form, such as VA Form 10-2237b, Request for Dietetic Supplies.

813.106-70 Soliciting competition, evaluation of quotations or offers, award and documentation – the Veterans First Contracting Program.

(a) General. When using competitive procedures under this part, the contracting officer shall use the Veterans First Contracting Program in subpart 819.70 and the guidance set forth in 813.003-70.

(b) Pursuant to 38 U.S.C 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a verified SDVOSB or VOSB for procurements under the simplified acquisition threshold.

(c) Under 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a firm verified under the Veterans First Contracting Program at subpart 819.70, using procedures other than competitive procedures if—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed $5,000,000; and

(3) In the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers overall best value to the government.

SUBPART 813.2 – ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, changes VAAR part 813 by adding VAAR 813.203. The deviations are necessary to reflect the Veterans First Contracting Program in subpart 819.70 as it applies to VA contract actions under VAAR part 813. VAAR subpart 819.70 has precedence over other small business programs in FAR part 19. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

813.203 Purchase guidelines.

(a)(1) Open market micro-purchases shall be equitably distributed among all verified SDVOSBs or VOSBs to the maximum extent practicable in keeping with the flexibilities inherent in purchases under the micro-purchase threshold.

SUBPART 813.3 – SIMPLIFIED ACQUISITION METHODS

813.302 Purchase orders.

813.305-5 Clauses.

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

813.307 Forms.

(a) The following forms provide a purchase or delivery order, vendor's invoice, and receiving report:

(1) VA Form 90-2138, Order for Supplies or Services.

(2) VA Form 90-2139, Order for Supplies or Services (Continuation).

(3) VA Form 90-2138-ADP, Purchase Order for Supplies or Services.

(4) VA Form 2139-ADP, Order for Supplies and Services (Continuation).

(b) The contracting officer may use the forms specified in paragraphs (a)(1) through (a)(4) of this section instead of OF 347, Order for Supplies or Services, OF 348, Order for Supplies or Services Schedule—Continuation, and SF 1449, Solicitation/Contract/Order for Commercial Items.

(c) The contracting officer or other properly delegated official (see 801.670-3) may use the following order forms when ordering the indicated medical, dental, and ancillary services totaling up to $10,000 per authorization when such services are not available under existing contracts:

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

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

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

(d) In authorizing patient travel as set forth in VA manual MP-1, Part II, Chapter 3, the contracting officer or other properly delegated official (see 801.670-3) may use VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, as provided by that manual.

(e) The contracting officer must use SF 182, Request, Authorization, Agreement, and Certification of Training, for procurement of training.

[Deviation per Class Deviation—VAAR 813.307, Forms, and VAAR 853.213, Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348, dated March 31, 2017, increases the dollar threshold to the Simplified Acquisition Threshold for VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expires March 31, 2018, unless otherwise rescinded.]

(f) The contracting officer may use VA Form 10-2421, Prosthetics Authorization for Items or Services, for prosthetic implants not in excess of the Simplified Acquisition Threshold (SAT). Applicable FAR and VAAR clauses will be added to the form as required. Patient information will not be stored in the Electronic Contract Management System (eCMS). Supporting documentation and Federal Procurement Data System (FPDS) reports will be accomplished in accordance with VA policies.

This page intentionally left blank.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.3 – Source Selection

Sec.
815.303 Responsibilities.
815.304 Evaluation factors and significant subfactors.
815.304-70 Evaluations factor commitments.
815.304-71 Solicitation provision and clause.

Subpart 815.4 – Contract Pricing

815.404 Proposal analysis.
815.404-1 Proposal analysis techniques.
815.404-2 Information to support proposal analysis.

Subpart 815.6 – Unsolicited Proposals

815.604 Department points of contact.
815.606 Department procedures.
815.606-1 Receipt and initial review.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

This page intentionally left blank.

SUBPART 815.3 – SOURCE SELECTION

[Deviation per Class Deviation—815.303, Responsibilities (VAIQ 7759423), dated December 15, 2016, in order to delegate to the HCAs the authority to designate an individual other than the contracting officer as the Source Selection Authority (SSA) for a particular acquisition or group of acquisitions. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded]

815.303 Responsibilities.

The authority of the Secretary to appoint an individual other than the contracting officer to serve as the SSA (Source Selection Authority) for a particular acquisition or group of acquisitions is hereby delegated to the Head of the Contracting Activities (HCAs). If an individual requests someone other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the requester shall prepare a request and justification and shall submit the request through channels to the appropriate HCA for approval.

815.304 Evaluation factors and significant subfactors.

(a) In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors providing additional consideration to such offerors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

815.304-70 Evaluation factor commitments.

(a) VA contracting officers shall:

(1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(2) Use past performance in meeting SDVOSB subcontracting goals as a nonprice evaluation factor in selecting offers for award;

(3) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders; and

(4) Use participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or

task or delivery orders.

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the contracting officer 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.

815.304-71 Solicitation provision and clause.

(a) The contracting officer shall insert the provision at 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215–71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR clause 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

SUBPART 815.4 – CONTRACT PRICING

815.404 Proposal analysis.

815.404-1 Proposal analysis techniques.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See 801.602-70.)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum, the items set forth in FAR 15.404-1(e)(2).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre- award audit.

815.404-2 Information to support proposal analysis.

In evaluating start-up and other non-recurring costs, the contracting officer must determine the extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future noncompetitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

SUBPART 815.6 – UNSOLICITED PROPOSALS

815.604 Department points of contact.

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposal or inquiries to the following:

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

(b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.

(c) Proposals to VA Central Office must be referred to the Director, Acquisition Operations Service (049A3).

815.606 Department procedures.

(a) The VA contact point will do the following:

(1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.

(2) In consultation with such technical/ professional offices, the VA contact point will furnish the potential offeror the information specified in FAR 15.604 and any other information that might be of assistance to the potential offeror.

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

(c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.605. If required information is not submitted, the contact point will:

(1) Determine if FAR 15.604 requires advance guidance;

(2) Determine whether a comprehensive evaluation prescribed by FAR 15.606-2 is appropriate and, if so, request that the offeror provide the necessary information; and,

(3) Establish an estimated due date for completion of the review process.

815.606-1 Receipt and initial review.

(a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e., the proposal complies with the requirements in FAR 15.606-1(a) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with FAR 15.609 has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

(1) The date the proposal was received.

(2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.

(3) A description of the proposal.

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

(5) The date the reviewing offices finalize their respective evaluations.

(6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in FAR 15.607(a)(1) through (4). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE (049A5) before the contact point, if warranted as a contracting officer, or an appropriate contracting officer begins negotiation on proposals. The contact point must provide the DSPE (049A5) all necessary documentation supporting the noncompetitive negotiation, including any justification and approval required by FAR Subpart 6.3 and the results of any synopsis required by FAR Subpart 5.2. The DSPE (049A5) will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.

This page intentionally left blank.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 816—TYPES OF CONTRACTS

Subpart 816.1 – Selecting Contract Types

Sec.
816.102 Policies.

Subpart 816.5 – Indefinite-Delivery Contracts

816.505 Ordering.

Subpart 816.70 – Unauthorized Agreements

816.7001 Letters of availability.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

This page intentionally left blank.

SUBPART 816.1 – SELECTING CONTRACT TYPES

816.102 Policies.

(a) Contracting officers must obtain technical review of solicitations that include a clause that provides for economic price adjustment specified in FAR 16.203-4 or any locally developed clause (see FAR 16.203-4(d)(2) and801.602-72(d)). The request for approval must include a clearly stated need for the clause.

(b) The contracting officer must obtain the approval of the Director, Acquisition Resources Service (049A5), VA Central Office, before issuing a solicitation or awarding a contract that includes time-and-material or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds$100,000. See 801.602-71 for technical review requirements. Excluded from this requirement are time-and-material or labor-hour solicitations or proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair of storm damage, etc. (i.e., where FAR 6.302-2 applies).

(c) Except as provided in FAR 32.703-3, a contract that involves a direct obligation of appropriations and lasts for more than one year from the beginning of the contract period must provide that:

(1) The contract applies to the period stated in the contract, subject to availability of funds; and

(2) The contractor will not perform any service under the contract after September 30 of each fiscal year (or beyond the period of the basic contract or any authorized option if the contract crosses fiscal years as provided in FAR 32.703-3(b)) unless the contractor obtains specific authorization from the contracting officer.

(d) A/E contracts, construction contracts, or professional engineer contracts, financed by "no year" appropriations, are not subject to the requirements of paragraph (c) of this section.

SUBPART 816.5 – INDEFINITE-DELIVERY CONTRACTS

[Deviation per Class Deviation—816.504, Indefinite-quantity contracts (VAIQ 7287642), dated October 11, 2012, to comply with the FAR requirement that the contract clauses prescribed in VAAR 816.504 supplement the FAR to satisfy the specific needs of the VA. Particularly, this deviation is to suspend clause 852.216-70, Estimated quantities. This class deviation will remain in effect until incorporated into the VAAR or the VAAM or it otherwise rescinded.]

816.504 Indefinite quantity contracts. [Reserved]

816.505 Ordering.

The task order contract and delivery order ombudsman for VA is the Associate Deputy Assistant Secretary for Acquisitions (see FAR 16.505(b)(5)). Contracting officers may obtain the name, telephone number, facsimile number, and e-mail address of the current Associate Deputy Assistant Secretary for Acquisitions by contacting: The Office of Acquisitions (049A), VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

SUBPART 816.70 – UNAUTHORIZED AGREEMENTS

816.7001 Letters of availability.

(a) Description. A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier that primarily seeks to reserve a place on the supplier's production or delivery schedule for long lead-time items. A letter of availability usually indicates products or services being considered for procurement. A supplier should not construe a letter of availability as a commitment. Prospective contractors sometimes solicit letters of availability or the letters may originate from Government personnel. A letter of availability differs from a letter contract, which is specifically authorized in FAR 16.603.

(b) Policy.

(1) For the following reasons, contracting officers may not use letters of availability unless the DSPE specifically authorizes them to do so:

(i) Letters of availability often cause potential contractors to initiate costly preparations in anticipation of contract award.

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

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

(2) Contractors need access to procurement information as soon as possible to make timely preparations. Therefore, procurement personnel should act as efficiently and expeditiously as possible on all procurement actions.

This page intentionally left blank.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1 – Multi-Year Contracting

Sec.
817.105 Policy.
817.105-1 Uses.

Subpart 817.2 – Options

817.202 Use of options.
817.204 Contracts.

Subpart 817.4 – Leader Company Contracting

817.402 Limitations.

Subpart 817.5 – Interagency Acquisitions Under the Economy Act

817.501 General.

AUTHORITY: 38 U.S.C. 8127.

This page intentionally left blank.

SUBPART 817.1 – MULTI-YEAR CONTRACTING

817.105 Policy.

817.105-1 Uses.

(a) Under 38 U.S.C. 114, VA contracting officers may enter into multi-year contracts for supplies and services not to exceed 5 years (unless otherwise authorized by statue), provided the Secretary or designee makes the following determinations:

(1) Appropriations are available for obligation to pay for the total payments for the fiscal year in which the contract is awarded plus the estimated amount of any cancellation charges.

(2) The contract serves the best interest of the Government by:

(i) Reducing cost;

(ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance; and

(iv) Encouraging effective competition.

(3) That, during the contract period:

(i) Demand for the supplies or services will continue;

(ii) Substantial changes in demand for supplies and services in terms of quantity or rate of delivery are unlikely; and

(iii) Specifications for the supplies or services will remain reasonably stable.

(4) The risk of the contractor's inability to perform under the terms and conditions of the contract is low.

(5) A multi-year contract will not inhibit competition from small businesses.

(6) For a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, that there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b) The Secretary has delegated authority to make the determinations specified in 817.105-1(a) as follows:

(1) HCAs may make the above determinations and approve contracts that do not require legal/technical reviews under 801.602-70 and that do not contain a first year cancellation ceiling exceeding 20 percent of the contract value over the full multi-year term.

(2) Authority to make the above determinations and to approve all other proposed multi-year contracts is delegated to the SPE and is further delegated to the DSPE. For approval purposes, the HCA will justify and document the use of a multi-year contract against each of the criteria specified in paragraphs (a)(1) through (a)(6) of this section and forward to the DSPE for approval. The justification must explain the cancellation ceiling and the method used to calculate that ceiling. The justification also must explain the advantages of multi-year contracts over other alternative methods, e.g., option year contracts.

(c) The contracting officer must develop the cancellation ceilings in accordance with FAR 17.106-1. (38 U.S.C. 114)

SUBPART 817.2 – OPTIONS

817.202 Use of options.

All solicitations developed under Office of Management and Budget Circular A-76 (Revised) cost comparisons will provide for four one-year renewal options as prescribed in FAR Subpart 17.2. The contracting officer must forward requests to use less or more than the prescribed contract period for Circular A-76 (Revised) cost comparisons to the DSPE for approval.

[Deviation per Class Deviation 817.204, Contracts Regarding Option Year Contracts and Terms Exceeding 5 Years (VAIQ 7640793), dated December 2, 2015, to delegate authority to approve periods of service beyond 5 years from the DSPE to the HCAs or designee. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded]

817.204 Contracts.

(a) 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). This requirement does not apply to contracts to be awarded by or on behalf of the VA Office of the Inspector General. The request for approval must include the following:

(1) Supporting documentation, rationale, and justifications for the use of options (see FAR 17.205) and for exceeding the 5-year limitation.

(2) Documentation that the contracting officer has considered and addressed the limitations specified in FAR 17.202(b) and (c).

(b) Solicitations that require technical review in accordance with 801.602-71 through 801.602-73 shall be submitted for review concurrently as provided therein.

(c) HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts containing options exceeding 5 years. The report shall include—

(1) Contract number;

(2) Contractor name;

(3) Contracting activity;

(4) Total amount of contract;

(5) Total number of years of contract or period of performance;

(6) Total number of options;

(7) Value (amount) of base year of contract;

(8) Value (amount) of option year exercised and number of options;

(9) Remaining value (amount) and number of options remaining;

(10) Identification of the type of procurement (supplies, services construction); and

(11) Identify the item(s) or service(s) procured.

SUBPART 817.4 – LEADER COMPANY CONTRACTING

817.402 Limitations.

(a) Except as provided in paragraph (b) of this section, the Government shall not initiate or execute leader company contracts.

(b) The DSPE may designate a contracting officer to enter into a leader company contract for the benefit of VA and the Government. The DSPE must designate a contracting officer by name for a specific contract. The named contracting officer will submit the proposed contract, with a determination and finding, for legal review in accordance with 801.602-75.

SUBPART 817.5 – INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, replaces the language in VAAR 817.502 in its entirety and renumbers the section as 817.501. The deviation applies the Veterans First Contracting Program to any agreement or arrangement with any governmental entity to acquire goods and services on behalf of VA by contract. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

817.501 General.

(d) All contracts, agreements, or other arrangements with any governmental entity to acquire goods and services, including construction, that permits the governmental entity to award contracts on behalf of the Department of Veterans Affairs shall include a requirement that the entity will comply with the provisions of 38 U.S.C. 8127 and 8128 and the Veterans First Contracting Program as implemented at subpart 819.70. The governmental entity shall award contracts (see FAR 2.101 for the definition of contracts) to capable service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) listed as verified in the Vendor Information Pages (VIP) database.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS PROGRAMS

Sec.

Subpart 819.1 – Size Standards

819.102 Size Standards

Subpart 819.2 – Policies

819.201 General policy.
819.202 Specific policies.
819.202-1 Encouraging small business participation in acquisitions.
819.202-5 Data collection and reporting requirements.
819.202-70 HCA responsibilities.
819.202-71 Additional contracting officer responsibilities.
819.202-72 [Reserved]
819.203-70 Priority for service-disabled veteran-owned small business/veteran-owned small business contracting preference.

Subpart 819.3 – Determination of Small Business Status for Small Business Programs

819.307 SDVOSB/VOSB Small Business Status Protests.

Subpart 819.5 – Set-Asides for Small Business

819.501-70 General principles for setting aside VA acquisitions.
819.502 Setting aside acquisitions.
819.502-2 Total small business set-asides.
819.502-3 Partial set-asides.
819.502-4 Multiple-award contracts and small business set-asides

Subpart 819.6 – Certificates of Competency and Determinations of Responsibility

819.602 Procedures.
819.602-3 Resolving differences between VA and the Small Business Administration.

Subpart 819.7 – The Small Business Subcontracting Program

819.704 Subcontracting plan requirements.
819.705 Appeal of Contracting Officer decisions.
819.709 Contract clause.

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

819.800 General.

Subpart 819.70 – Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program

819.7001 General.
819.7002 Applicability.
819.7003 Eligibility.
819.7004 Contracting Order of Priority.
819.7005 VA service-disabled veteran-owned small business set-aside procedures.
819.7006 VA veteran-owned small business set-aside procedures.
819.7007 Sole source awards to a verified service-disabled veteran-owned small business.
819.7008 Sole source awards to a verified veteran-owned small business.
819.7009 Contract clauses.

Subpart 819.71 – VA Mentor-Protégé Program

819.7101 Purpose.
819.7102 Definitions.
819.7103 Non-affiliation.
819.7104 General policy.
819.7105 Incentives for prime contractor participation.
819.7106 Eligibility of Mentor and Protégé firms.
819.7107 Selection of Protégé firms.
819.7108 Application process.
819.7109 VA review of application.
819.7110 Developmental assistance.
819.7111 Obligations under the Mentor-Protégé Program
819.7112 Internal controls.
819.7113 Reports.
819.7114 Measurement of program success.
819.7115 Solicitation provisions.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); 48 CFR 1.301–1.304; and 15 U.S.C. 637(d)(4)(E).

PART 819—SMALL BUSINESS PROGRAMS

SUBPART 819.1– SIZE STANDARDS

[Deviation per Class Deviation—Authority to approve the submission of a request for a Nonmanufacturer Rule Waiver to the Small Business Administration (SBA) and use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where the SBA has issued a class waiver to the Nonmanufacturer Rule, dated February 17, 2016, to add section VAAR 819.102(f)(4) and (5). This requires the Head of the Contracting Activity (HCA) to 1) approve any request for a Nonmanufacturer Rule waiver prior to submission to the Small Business Administration (SBA) for class waivers or for a specific solicitation; and 2) the use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

819.102 Size standards.

(f)(4) A contracting officer must receive approval from the Head of Contracting Activity (HCA) prior to submitting any request for a Nonmanufacturer Rule waiver to the Small Business Administration (SBA) pursuant to 13 C.F.R. 121.1204. This authority cannot be re-delegated.

(5) Where the SBA has issued a class waiver to the Nonmanufacturer Rule, a contracting officer must receive approval from the HCA prior to utilizing other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127. This authority cannot be redelegated.

SUBPART 819.2 – POLICIES

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program in VAAR 819.201 and 819.202 to include emphasizing attainment of the Secretary's annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

819.201 General policy.

(a) It is the Department of Veteran Affairs (VA) policy that small business concerns owned and controlled by veterans shall have maximum practicable opportunity to participate in VA acquisitions, consistent with efficient contract performance and the priorities and preferences established under 38 U.S.C. 8127 and 8128.

(1) To carry out this policy the Secretary establishes annual goals for service-disabled veteran-owned small business (SDVOSB) and veteran-owned small business (VOSB) participation in VA contracting. The VA SDVOSB goal shall be no less than the government-wide goal for SDVOSBs.

(2) In support of these goals, each administration and staff office shall in turn establish annual goals for each subordinate contracting activity that present, for that activity, the maximum practicable opportunity for small business concerns, and particularly SDVOSBs/VOSBs, to participate in the performance of the activity's contracts and subcontracts.

(3) The attainment of these goals or the use of interagency acquisition vehicles does not limit the applicability of the Veterans First Contracting Program and priorities in subpart 819.70.

(b) Each Head of the Contracting Activity (HCA) shall develop, in coordination with the Office of Small and Disadvantaged Business Utilization (OSDBU), an annual small business operating plan to increase the share of contracts and purchase orders awarded under the small business programs prescribed in FAR part 19 and this part. The HCA shall also ensure that an annual procurement forecast of contracting opportunity is developed pursuant to Section 501 of Public Law 100-656.

(c) In addition to the duties and responsibilities in FAR 19.201(c), the OSDBU Director is also responsible for the implementation of the Veterans First Contracting Program in subpart 819.70.

(d) Each organization with contracting authority shall designate small business specialists/technical advisors in coordination with the OSDBU Director.

819.202 Specific policies.

OSDBU is responsible for reviewing procurement strategies and making recommendations to assist contracting officers in the implementation of this part. These responsibilities shall be conducted within the VA hierarchy of small business program preferences established by 38 U.S.C. 8127(i) (see subpart 819.70), which requires VA to consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. The attainment of contracting goals or the use of Government-wide or multi-agency contract vehicles does not preclude the applicability of these preferences. Contracting officers shall use VA Form 2268, Small Business Program and Contract Bundling Review to document actions and recommendations. Searches and results of the Vendor Information Pages (VIP) database shall be saved and attached to the VA Form 2268 along with accompanying market research report or information.

819.202-1 Encouraging small business participation in acquisitions.

Contracting officers may negotiate payment terms of less than 30 calendar days to encourage small business participation. A period of less than 7 days may not be prescribed (see FAR 32.908(c)(2)). The contracting officer and the local fiscal officer must be in agreement on the negotiated payment terms before awarding the contract.

819.202-5 Data collection and reporting requirements.

(d) Administration heads, staff office directors, and HCAs must, in addition to the responsibilities designated in FAR 19.202-5, cooperate with OSDBU in formulating specific small business program goals and providing other data necessary for goal assessment.

(e) Each VA acquisition activity shall establish goals for the expenditure of funds with preferred businesses with their projected annual budget. OSDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(c) A Procurement Preference Program Goals Report (Report Control Symbol 00-00427) shall be submitted annually by each acquisition activity to reach OSDBU by November 1. Each Report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal. Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with the Small Business Administration.

819.202-70 HCA responsibilities.

An HCA must perform the following functions in support of the small business program. These functions cannot be delegated without written approval of the Director, OSBDU:

(a) Develop, on an annual basis, a plan of operation to increase the share of contracts and purchase orders awarded to the small business programs prescribed in FAR Part 19. This plan must also include veteran-owned and service-disabled veteran-owned small business concerns.

(b) Promote goals for the small business programs set forth in FAR Part 19. This must also include veteran-owned and service-disabled veteran-owned small business concerns.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides.

(d) Review class set-asides, established in accordance with criteria in FAR 19.503, at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn.

(e) Maintain updated lists of acquisitions reserved for small business on a class basis.

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

(g) Encourage technical personnel and end-users to participate in discussions with veteran-owned and service-disabled veteran-owned small business concerns.

(h) Attend conferences and meetings publicizing small business programs. This responsibility may be delegated without the written approval of the Director, OSBDU.

819.202-71 Additional contracting officer responsibilities.

In addition to the duties designated in FAR 19.202 through 19.202-6, contracting officers must perform the following functions in support of the small business program:

(a) Make maximum use of small business source lists.

(b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.

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

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

(e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.

(f) Submit informational copies of all small business protests and appeals to the Director, OSBDU, at the same time they are submitted to the SBA.

819.202-72 [Reserved]

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program by adding 819.203-70, and to include emphasizing attainment of the Secretary's annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

819.203-70 Priority for service-disabled veteran-owned small business/veteran-owned small business contracting preferences.

(a) 38 U.S.C. 8127 and 8128 require the VA to provide priority and establish special acquisition methods to increase contracting opportunities for SDVOSBs and VOSBs. These priorities and special acquisition methods are set forth in subpart 819.70 and shall be applied by VA contracting officers before other priorities and preferences in FAR 19.203.

(b) 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. Contracting officers shall include the provision and clause prescribed at 815.304-71 in solicitations.

(c) The attainment of goals or the use of interagency vehicles or Government-wide contract vehicles (i.e., Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as required by subpart 819.70. 38 U.S.C. 8127(j) requires that if the VA enters into a contract, agreement, or other arrangement with any governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement will comply, to the maximum extent feasible, with the provisions of the program of preferences and priorities for verified SDVOSBs and VOSBs.

SUBPART 819.3 – DETERMINATION OF SMALL BUSINESS STATUS FOR SMALL BUSINESS PROGRAMS

817.307 SDVOSB/VOSB Small Business Status Protests.

(a) All protests relating to whether a Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) is a "small" business for the purposes of any Federal program are subject to 13 CFR part 121 and must be filed in accordance with that part. SDVOSB and VOSB status shall be determined in accordance with 38 CFR part 74.

(b) A contracting officer or an interested party may protest the apparently successful offeror's SDVOSB or VOSB status. "Interested party" for the purpose of filing a status protest is an actual offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) All status protests shall be in writing and shall state all specific grounds for the protest. Assertions that a protested concern, without setting forth specific facts or allegations, are insufficient. An interested party must submit its status protest to the contracting officer by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). An interested party must deliver their protest in person, by electronic mail, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer. Any status protest received after these time limits is untimely. Any status protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester. Except for premature status protests, the contracting officer must forward to the Director, Center for Verification and Evaluation (CVD), any status protest received.

(d) The Director, CVE, will notify the protester and the contracting officer of the date the status protest was received by CVE and whether the status protest will be processed or dismissed for lack of timeliness or specificity.

(e) The Director, CVE, will determine the SDVOSB or VOSB status of the protested concern based upon the totality of circumstances within 21 business days after receipt of the status protest. If the Director, CVE, does not contact the contracting officer within 21 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted the Director, CVE, an extension. The contracting officer may award the contract after receipt of a status protest if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer shall document this determination for the contract file.

(f) A denial decision by the Director, CVE, that is based on the failure to meet any service-disabled Veteran or Veteran criterion as defined in 38 CFR 74.1 is not subject to an appeal to the Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU), and is a final decision.

(g) The Director, CVE, will notify the contracting officer, the protestor, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by the Executive Director, OSDBU. The determination may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

(h) If the Director, CVE, sustains an SDVOSB or VOSB status protest and

the contract has already been awarded, then the awarded contract shall be deemed void ad initio and the contracting officer shall rescind the contract and award the contract to the next SDVOSB or VOSB in line for the award. The ineligible SDVOSB or VOSB concern shall not be permitted to submit another offer as a SDVOSB or VOSB on a future SDVOSB or VOSB procurement under this part, unless it successfully appeals the determination of the Director, CVE, to the Executive Director, OSDBU, or unless it applies for and receives verified SDVOSB or VOSB status in accordance with 38 CFR part 74.

(i) Except as provided in subsection (f), the protestor or the protested SDVOSB or VOSB concern may file an appeal of the status protest determination with the Executive Director, OSDBU. The Executive Director must receive the appeal no later than 5 business days after the date of receipt of the status protest determination. The Executive Director will dismiss any appeal received after the 5-day period. “Filing” means a document is received by the Executive Director by 5:30 p.m., Eastern Standard Time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due to, for example, security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt by the Executive Director, OSDBU. Submit appeals to: Executive Director, OSDBU (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

(j) The appeal must be in writing. The appeal must identify the status protest determination being appealed and must set forth a full and specific statement as to why the decision was based on clear error of fact or law.

(k) The party appealing the determination must provide notice of the appeal to the contracting officer. The Executive Director will decide all appeals under this subpart solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

(l) The Executive Director will make a decision within 10 business days of the receipt of the appeal, if practicable, and will base the decision only on the information and documentation in the protest record as supplemented by the appeal. The Executive Director will provide a copy of the decision to the contracting officer and the protested SDVOSB or VOSB concern. The Executive Director’s decision, if received before the award, will apply to the pending acquisition. If the Executive Director decides in favor of the appealing party and the decision is received after the award, the contracting officer may terminate the contract or not exercise the next option. The Executive Director’s decision is the final decision. The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

[78 FR 59865, Sept. 30, 2013]

SUBPART 819.5 – SET-ASIDES FOR SMALL BUSINESS

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program by adding 819.501-70 and 819.502-4, to include general principles for setting aside VA acquisitions and that the principles apply, as well as emphasizing attainment of the Secretary's annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. VAAR 819.502-4 emphasizes that subpart 819.70 applies to VA orders and BPAs under Federal Supply Schedule (FSS) and other vehicles. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

819.501-70 General principles for setting aside VA acquisitions.

(a) The following principles apply to VA acquisitions under this subpart:

(1) Before setting aside or reserving an acquisition for small businesses under FAR subpart 19.5, contracting officers shall refer to 819.203-70 and subpart 819.70 for VA SDVOSB/VOSB priorities and preferences.

(2) Set-asides under the Veterans First Contracting Program in subpart 819.70 (see 819.7005 and 819.7006) have precedence over other small business set-asides referenced in FAR part 19, both above and below the simplified acquisition threshold (SAT). SDVOSB and VOSB set-asides also satisfy the requirement to reserve actions below the SAT for small business.

(3) Set-asides for verified SDVOSB and VOSB are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more competitive offers/quotes at a fair and reasonable price that offers best value to the Government. Because only verified SDVOSBs and VOSBs can participate on such set-asides, the contracting officer should start by identifying firms listed as verified in the VIP database and then determine what acquisition strategy and priorities in 808.004(a), including FSS, is most appropriate.

(4) When a procurement requirement will not be set aside or otherwise awarded to verified SDVOSBs or VOSBs pursuant to subpart 819.70, the contracting officer shall document the file in accordance with OSDBU guidance and include SDVOSB/VOSB evaluation preferences in the solicitation as set forth in 815.304.

(b) These principles apply even when a procuring activity is meeting its goals or is planning the use of an interagency or Government-wide contract vehicle.

(c) Any reference to small business preferences/set-asides in FAR subpart 19.5 is to be construed to include verified SDVOSBs and VOSBs,

unless it clearly conflicts with this subpart**.**

819.502 Setting aside acquisitions.

819.502-2 Total small business set asides.

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

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

(2) Notice of total small business set-aside, page_____, applies to items_____through_____in this solicitation.

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

819.502-3 Partial set-asides.

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

Notice of partial set-aside, page_____, applies to item_____through item _____in this solicitation.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program in 819.502-4 to include direction regarding orders on other agency multiple awards that emphasizes attainment of the Secretary's annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

819.502-4 Multiple-award contracts and small business set-asides.

(c) The requirements in subpart 819.70 apply to VA orders and BPAs under Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACS) and Multi-Agency Contracts (MACs) awarded by another agency. A set-aside restricted to verified SDVOSBs or VOSBs pursuant to subpart 819.70 satisfies competition requirements in FAR part 6, as well as the fair opportunity requirements in FAR 16.505 (see FAR 16.505(b)(2)(i)(F)).

SUBPART 819.6 – CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY

819.602 Procedures.

819.602-3 Resolving differences between VA and the Small Business Administration.

The Director, OSDBU, is the VA liaison with the SBA. Information copies of correspondence sent to the SBA seeking a certificate of competency determination must be concurrently provided to the Director, OSDBU. Before appealing a certificate of competency, the HCA must seek concurrence from the Director, OSDBU.

SUBPART 819.7 – THE SMALL BUSINESS SUBCONTRACTING PROGRAM

819.704 Subcontracting plan requirements.

(a) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA SDVOSB prime contracting goal for the total value of planned subcontracts.

(b) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA VOSB prime contracting goal for the total value of all planned subcontracts.

(c) VA's OSDBU shall review all prime contractor's subcontracting plan achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) of this section, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in 804.1102.

819.705 Appeal of Contracting Officer decisions.

(a) Acquisitions not exceeding the simplified acquisition threshold (SAT) and 819.7007 and 819.7008 are excluded from this section.

(b) When an interested party intends to appeal a contracting officer's decision to not use the set-aside authority contained in subpart 819.70, the party shall notify the contracting officer, in writing, of its intent to challenge the decision. The contracting officer has 5 working days to reply to the challenge by either revising the strategy or indicating the rationale for not setting aside the requirement. Upon receipt of the decision, the interested party may appeal to

the Head of the Contracting Activity (HCA). Such appeal shall be filed within 5 working days of receipt of the contracting officer's decision. The HCA has 5 working days to respond to the appeal. The contracting officer shall suspend action on the acquisition unless the HCA makes a written determination that urgent circumstances exist which would significantly affect the interests of the government. The decision of the HCA shall be final.

(c) Prime contractors submitting businesses declared ineligible for credit in SDVOSB and/or VOSB subcontracting plans may appeal to the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, within 5 working days of receipt of information declaring their subcontractor ineligible. The Executive Director shall have 5 working days to respond. The decision of the Executive Director may be appealed to the Senior Procurement Executive (SPE) within 5 working days. The SPE shall have 15 working days to respond and that decision shall be final.

819.709 Contract clause.

The contracting officer shall insert VAAR clause 852.219-9, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include FAR clause 52.219-9, Small Business Subcontracting Plan.

SUBPART 819.8 – CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(A) PROGRAM)

819.800 General.

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

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

(c) The contract will be made between VA and SBA and will be administered by VA.

SUBPART 819.70 – SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS ACQUISITION PROGRAM

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises VAAR subpart 819.70 in its entirety to fully implement the Veterans First Contracting Program to comply with 38 U.S.C. 8127 and 8128 and the U.S. Supreme Court decision. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

819.7001 General.

(a) Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006 as amended (38 U.S.C. 8127- 8128) directs a VA specific acquisition program for small business concerns owned and controlled by service-disabled veterans and those owned and controlled by veterans.

(b) The purpose of the program is to provide contracting assistance to verified SDVOSBs and VOSBs, so they can fully participate in the VA contracting process. The program as implemented in this subpart shall be referred to as the Veterans First Contracting Program.

(c) 38 U.S.C. 8127 (b), (c) and (d) provide the authority for VA contracting officers to make awards to verified SDVOSBs/VOSBs using set-asides, as well as other than full and open competition (sole source), when certain conditions are met.

(d) Contracting officers shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans (see 819.7005 and 819.7006), to the maximum extent practicable. The contracting officer may also use other SDVOSB/VOSB preferences in this subpart as appropriate.

819.7002 Applicability.

This subpart applies to VA contracting activities and to all contracts (see FAR 2.101, Definitions), including BPAs and orders, under FAR subpart 8.4 and FAR part 12 that are not otherwise excluded by law. In addition, this subpart applies to any government entity that has a contract, agreement, or other arrangement with the VA to acquire goods and services on behalf of the VA in accordance with 817.502.

819.7003 Eligibility.

(a) Size eligibility of SDVOSBs/VOSBs continues to be governed by the Small Business Administration (SBA) regulations, 13 CFR subparts 125.8 through 125.13, as well as FAR part 19, except where expressly directed otherwise by this part, and 38 CFR 74 verification regulations for SDVOSBs/VOSBs.

(b) At the time of submission of offers/quotes, and prior to award of any contracts, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB or VOSB eligible under this subpart;

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and

(3) SDVOSB/VOSB listed as verified in VIP database at: https://www.vip.vetbiz.gov.

(c) A joint venture may be considered an SDVOSB/ VOSB concern if—

(1) At least one member of the joint venture is a verified SDVOSB or VOSB and makes the representations in paragraph (b) of this section;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the size standard explanation of affiliates in FAR 19.101; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), modified to include VOSBs where this CFR section refers to SDVOSBs.

(d) Any SDVOSB/VOSB (non-manufacturer) must meet the requirements in FAR 19.102(f) to receive a benefit under this program.

(e) In some instances, SDVOSB eligibility may be extended to businesses owned and operated by surviving spouses, as set forth in 802.101;

(f) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented its SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This debarment includes all principals in the business. See 809.406, Debarment.

819.7004 Contracting order of priority.

In determining the acquisition strategy applicable to a procurement requirement the contracting officer shall consider, in the following order of priority, contracting preferences prescribed in this part for awarding VA contracts to:

(a) Eligible small business concerns owned and controlled by service-disabled veterans;

(b) Eligible small business concerns owned and controlled by veterans that are not covered by paragraph (a);

(c) Small business concerns using priorities and preferences in 819.203-70 and this subpart.

819.7005 VA service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides, before considering VOSB set-asides. Except as authorized by 813.106, 819.7007 and 819.7008, the contracting officer shall set-aside an acquisition for competition restricted to verified SDVOSB concerns upon a reasonable expectation based on market research that:

(1) Offers/quotes will be received from two or more eligible SDVOSB; and

(2) Award can be made at a fair and reasonable price that offers the best value to the government.

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure that:

(1) Businesses are registered and verified as eligible in the VIP database at the time of submission of offers/quotes, and prior to making an award; and

(2) Offerors affirmatively represent their small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract, as set forth in 819.7003(b) and/or (c).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from a verified SDVOSB in response to a SDVOSB set-aside, the contracting officer should make an award to that SDVOSB. If the

contracting officer receives no acceptable offers/quotes from verified SDVOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, or otherwise procured using the most appropriate strategy based on the results of market research**.**

819.7006 VA veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 813.106, 819.7007 and 819.7008, the contracting officer shall set aside an acquisition for competition restricted to SDVOSBs or VOSBs upon a reasonable expectation, based on market research, that:

(1) Offers/quotes will be received from two or more eligible SDVOSBs or VOSBs; and

(2) Award can be made at a fair and reasonable price.

(b) When conducting SDVOSB or VOSB set-asides, the contracting officer shall ensure that:

(1) Businesses are listed as verified in the VIP database at the time of submission of offers/quotes and prior to making an award; and

(2) Offerors affirmatively represent their SDVOSB/VOSB and small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract as set forth in 819.7003(b) and/or (c).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from a verified SDVOSB/VOSB in response to a SDVOSB or VOSB set-aside, the contracting officer should make an award to that SDVOSB or VOSB. If the contracting officer receives no acceptable offers/quotes from verified SDVOSBs or VOSBs, the SDVOSB or VOSB set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs or otherwise procured using the most appropriate strategy based on the results of market research.

819.7007 Sole source awards to a verified service-disabled veteran-owned small business.

(a) A contracting officer may award a contract to a verified SDVOSB concern using procedures other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The justification prepared pursuant to FAR 6.302-5(c)(2)(ii) is posted in accordance with FAR subpart 5.301(d);

(3) The SDVOSB concern has been determined to be a responsible source with respect to performance; and

(4) In the estimation of the contracting officer, contract award can be made at a fair and reasonable price that offers best value to the Government.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of verified SDVOSBs, this authority is to be used judiciously and only when in the best interest of the Government.

(c) A determination that only one SDVOSB can meet the requirement is not required. However, in accordance with FAR 6.302-5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements 819.7003**.**

(e) A procurement requirement estimated to exceed the legislative threshold of $5 million shall not be split or subdivided to permit the use of this SDVOSB sole source authority.

819.7008 Sole source awards to a verified veteran-owned small business.

(a) A contracting officers may award a contract to a verified VOSB concern using procedures other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The justification prepared pursuant to FAR 6.302-5(c)(2)(ii) is posted in accordance with FAR 5.301(d);

(3) The VOSB concern has been determined to be a responsible source with respect to performance;

(4) In the estimation of the contracting officer, contract award can be made at a fair and reasonable price that offers best value to the government; and

(5) No responsible SDVOSB concern has been identified.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of verified SDVOSB/VOSBs, this authority is to be used judiciously and only when in the best interest of the government.

(c) A determination that only one VOSB can meet the requirement is not required. However, in accordance with FAR 6.302-5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a VOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of $5 million shall not be split or subdivided to permit the use of this VOSB sole source authority.

819.7009 Contract clauses.

The contracting officer shall insert clause 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside or clause 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside as applicable, in open market solicitations and contracts for acquisitions set-aside under this subpart.

SUBPART 819.71 – VA MENTOR-PROTÉGÉ PROGRAM

819.7101 Purpose.

The VA Mentor-Protégé Program is designed to assist service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) in enhancing their capabilities to perform contracts and subcontracts for VA. The Mentor-Protégé Program is also designed to improve the performance of VA contractors and subcontractors by providing developmental assistance to protégé entities, fostering the establishment of long-term business relationships between SDVOSBs, VOSBs and prime contractors, and increasing the overall number of SDVOSBs and VOSBs that receive VA contract and subcontract awards. A firm's status as a protégé under a VA contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts.

819.7102 Definitions.

(a) A *Mentor* is a contractor that elects to promote and develop SDVOSBs and/or VOSBs by providing developmental assistance designed to enhance the

business success of the protégé. A mentor may be a large or small business concern.

(b) *OSDBU* is the Office of Small and Disadvantaged Business Utilization. This is the VA office responsible for administering, implementing and coordinating the Department's small business programs, including the Mentor-Protégé Program.

(c) *Program* refers to the VA Mentor-Protégé Program as described in this Subpart.

(d) *Protégé* means a SDVOSB or VOSB, as defined in 802.101, which meets federal small business size standards in its primary NAICS code and which is the recipient of developmental assistance pursuant to a Mentor-Protégé agreement.

819.7103 Non-affiliation.

A Protégé firm will not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance from the mentor firm under VA's Mentor-Protégé Program. The determination of affiliation is a function of the SBA.

819.7104 General policy.

(a) To be eligible, mentors and protégés must not be listed on the Excluded Parties List System, located at http://www.epls.gov. Mentors will provide appropriate developmental assistance to enhance the capabilities of protégés to perform as prime contractors and/or subcontractors.

(b) VA reserves the right to limit the number of participants in the program in order to ensure its effective management of the Mentor-Protégé Program.

819.7105 Incentives for prime contractor participation.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(e), VA is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. FAR 19.202-1 provides additional guidance.

(b) Costs incurred by a mentor to provide developmental assistance, as described in 819.7110 to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a VA contract. If VA is the mentor's responsible audit agency under FAR 42.703–1, VA will consider these costs in determining indirect cost rates. If VA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their

responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to subparagraph (b) of this section, contracting officers shall give mentors evaluation credit under 852.219–52, Evaluation Factor for Participation in the VA Mentor-Protégé Program, considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing mentor-protégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under FAR 15.305(a)(2)(v) and determining contractor responsibility 19.705–5(a)(1).

(d) OSDBU Mentoring Award. A nonmonetary award will be presented annually to the mentoring firm providing the most effective developmental support to a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the OSDBU Director.

(e) OSDBU Mentor-Protégé Annual Conference. At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on program progress.

819.7106 Eligibility of Mentor and Protégé firms.

Eligible business entities approved as mentors may enter into agreements (hereafter referred to as "Mentor-Protégé Agreement" or "Agreement" and explained in 819.7108) with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as mentors. Protégés may participate in the program in pursuit of a prime contractor as subcontractors under the mentor's prime contract with VA, but are not required to be a subcontractor to a VA prime contractor or be a VA prime contractor.

(a) Eligibility. A Mentor:

(1) May be either a large or small business entity and either a prime contractor or subcontractor;

(2) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or

subcontractors; and

(3) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) Eligibility. A Protégé:

(1) Must be a SDVOSB or VOSB as defined in 802.101;

(2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to VA's Program should maintain a system for preparing separate reports of mentoring activity so that results of VA's Program can be reported separately from any other agency program.

A protégé firm shall self-represent to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the VetBiz.gov VIP database. Protégés must maintain verified status throughout the term of the Mentor-Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

819.7107 Selection of Protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of SDVOSB or VOSB firms whose core competencies support VA's mission; and choose SDVOSB and/or VOSB protégés in addition to firms with whom they have established business relationships.

(b) Mentors may have multiple protégés. However, to preserve the integrity of the Program and assure the quality of developmental assistance provided to protégés, VA reserves the right to limit the total number of protégés participating under each mentor firm for the Mentor-Protégé Program.

(c) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with the FAR and SBA regulations.

819.7108 Application process.

(a) Firms interested in becoming approved mentor-protégé participants must submit a joint written VA Mentor-Protégé Agreement to the VA OSDBU for

review and approval. The proposed Mentor-Protégé Agreement will be evaluated on the extent to which the mentor plans to provide developmental assistance. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support.

(b) The Mentor-Protégé Agreement must contain:

(1) Names, addresses, phone numbers, and e-mail addresses (if available) of the mentor and protégé firm(s) and a point of contact for both mentor and protégé who will oversee the agreement;

(2) A statement from the protégé firm that the firm is currently eligible as a SDVOSB or VOSB to participate in VA's Mentor-Protégé Program;

(3) A description of the mentor's ability to provide developmental assistance to the protégé and the type of developmental assistance that will be provided, to include a description of the types and dollar amounts of subcontract work, if any, that may be awarded to the protégé firm;

(4) Duration of the Agreement, including rights and responsibilities of both parties (mentor and protégé), with bi-annual reviews;

(5) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the mentor or the protégé to notify the other firm and VA OSDBU in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(6) A schedule with milestones for providing assistance;

(7) Criteria for evaluation of the protégé's developmental success;

(8) A plan addressing how the mentor will increase the quality of the protégé firm's technical capabilities and contracting and subcontracting opportunities;

(9) An estimate of the total cost of the planned mentoring assistance to be provided to the Protégé;

(10) An agreement by both parties to comply with the reporting requirements of 819.7113;

(11) A plan for accomplishing unfinished work should the Agreement be voluntarily cancelled;

(12) Other terms and conditions, as appropriate; and

(13) Signatures and date(s).

(c) The Agreement defines the relationship between the mentor and the protégé firms only. The Agreement does not create any privity of contract between the mentor and VA or the protégé and VA.

819.7109 VA review of application.

(a) VA OSDBU will review the information to establish the mentor and protégé eligibility and to ensure that the information that is in VAAR 819.7108 is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDBU completes its review and provides written approval, the mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will post a copy of the Mentor-Protégé Agreements to a VA Web site to be accessible to VA contracting officers for review for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDBU will notify the mentor and protégé and request correction of deficiencies to be provided within 15 days.

819.7110 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include, but are not limited to, the following:

(a) Guidance relating to—

(1) Financial management;

(2) Organizational management;

(3) Overall business management/planning;

(4) Business development; and

(5) Technical assistance.

(b) Loans.

(c) Rent-free use of facilities and/or equipment.

(d) Property.

(e) Temporary assignment of personnel to a Protégé for training.

(f) Any other types of permissible, mutually beneficial assistance.

819.7111 Obligations under the Mentor-Protégé Program.

(a) A mentor or protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract with VA.

(b) Mentors and protégés shall submit reports to VA OSDBU in accordance with 819.7113.

819.7112 Internal Control.

(a) OSDBU will oversee the Program and will work cooperatively with relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances applicable to the Program. These controls will include:

(1) Reviewing and evaluating mentor applications for validity of the provided information;

(2) Reviewing bi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the plan submitted in the approved Agreement;

(3) Reviewing and evaluating financial reports and invoices submitted by the mentor to verify that VA is not charged by the mentor for providing developmental assistance to the protégé; and

(4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to insure the effective management of the Program.

(b) VA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in VA's best interest. The rescission shall be in writing and sent to the mentor and protégé after approval by the OSDBU Director. Rescission of an Agreement does not change the terms of any subcontract between the mentor and the protégé.

819.7113 Reports.

(a) Mentor and protégé entities shall submit to VA's OSDBU bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

(1) Specific actions taken by the mentor during the evaluation period to increase the participation of their protégé(s) as suppliers to VA, other government agencies and to commercial entities;

(2) Specific actions taken by the mentor during the evaluation period to develop technical and administrative expertise of a protégé as defined in the Agreement;

(3) The extent to which the protégé has met the developmental objectives in the Agreement;

(4) The extent to which the mentor's participation in the Mentor-Protégé Program impacted the protégé'(s) ability to receive contract(s) and subcontract(s) from private firms and federal agencies other than VA; and, if deemed necessary;

(5) Input from the protégé on the nature of the developmental assistance provided by the mentor.

(b) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor(s)' performance in the Program.

(c) In addition to the written progress report in paragraph (a) of this section, at the mid-term point in the Mentor-Protégé Agreement, the mentor and the protégé shall formally brief the VA OSDBU regarding program accomplishments as pertains to the approved agreement.

(d) Mentor and protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

819.7114 Measurement of program success.

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the quality of the technical capabilities of the protégé firm.

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program attributable to the mentor-protégé relationship (under VA contracts, contracts awarded by other Federal agencies and under commercial contracts.)

819.7115 Solicitation provisions.

(a) Insert 852.219-71, VA Mentor-Protégé Program, in solicitations that include FAR clause 52.219-9, Small Business Subcontracting Plan.

(b) Insert 852.219-72, Evaluation Factor for Participation in the VA Mentor-Protégé Program, in solicitations that include an evaluation factor for participation in VA's Mentor-Protégé Program in accordance with 819.7105 and that also include FAR clause 52.219-9, Small Business Subcontracting Plan.

This page intentionally left blank.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 832—CONTRACT FINANCING

Sec.
832.006 Reduction or suspension of contract payments upon finding
832.006-1 General.
832.006-2 Definitions.
832.006-3 Responsibilities.
832.006-4 Procedures.

Subpart 832.1 – Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

Subpart 832.2 – Commercial Item Purchase Financing

832.201 Statutory authority.
832.202 General.
832.202-1 Policy.
832.202-4 Security for Government financing.

Subpart 832.4 – Advance Payments for Non-Commercial Items

832.402 General.
832.404 Exclusions.

Subpart 832.5 – Progress Payments Based on Costs

832.502 Preaward matters.
832.502-2 Contract finance office clearance.

Subpart 832.8 – Assignment of Claims

832.805 Procedure.
832.805-70 Distribution/notification of assignment of claims.

Subpart 832.9 – Prompt Payment

832.904 Determining payment due dates.

Subpart 832.11 – Electronic Funds Transfer

832.1106 EFT mechanisms.

Subpart 832.70 – Electronic Invoicing Requirements

832.7000 General.
832.7001 Definitions.
832.7002 Electronic payment requests.
832.7002-1 Data transmission.
832.7002-2 Contract clause.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

832.006 Reduction or suspension of contract payments upon finding of fraud.

832.006-1 General.

The 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. This authority may not be redelegated.

832.006-2 Definitions.

The *remedy coordination official* for VA is the DSPE.

832.006-3 Responsibilities.

VA personnel must report suspected fraud related to advance, partial, or progress payments to the DSPE and VA Office of the Inspector General. The report must include all available information supporting the suspicion.

832.006-4 Procedures.

(a) Any recommendation from a VA employee through the DSPE to the SPE to reduce or suspend payment to a contractor under FAR 32.006 must address the considerations in FAR 32.006-4(d).

(b) The DSPE shall carry out the responsibilities of the Secretary or designee 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 DSPE 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 DSPE does not receive a reply from the contractor within 30 calendar days, the DSPE will base his or her recommendations on the information available. Any recommendation of the DSPE under paragraph (a) of this section must address the results of this notification and the information, if any, provided by the contractor.

(c) The SPE must provide a copy of each final determination and the supporting documentation to the contractor, the DSPE and the contracting officer. The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

SUBPART 832.1 – NON-COMMERCIAL ITEM PURCHASE FINANCING

832.111 Contract clauses for non-commercial purchases.

In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments under Fixed-Price Construction Contracts, the contracting officer shall insert the following clauses:

(a) If the solicitation or contract does not contain a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236-82, Payments under fixed-price construction contracts (without NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

(b) If the solicitation or contract contains a section entitled "Network Analysis System (NAS)," the contracting officer must insert the clause at 852.236-83, Payments under fixed-price construction contracts (including NAS). When the solicitation or contract includes guarantee period services, the contracting officer must use the clause with its Alternate I.

SUBPART 832.2 – COMMERCIAL ITEM PURCHASE FINANCING

832.201 Statutory authority.

The contracting officer may 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 Government, provided the terms and conditions for payment do not conflict with FAR Subpart 32.2.

832.202 General.

[Deviation per Class Deviation 832.202-1 and 832.402 (VAIQ 7640793), dated December 2, 2015, to delegate approval authority from the DSPE to the HCAs or designee for making findings and determinations and approval of contract terms for advance payments. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

832.202-1 Policy.

(d) HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts for commercial items with unusual contract financing or with commercial interim or advance payments approved for the previous fiscal year. The report shall include the contract number and amount, the amount of the unusual contract financing or with commercial interim or advance payments approved, and the kind and amount of security obtained for the advance.

832.202-4 Security for Government financing.

An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information to establish the offeror's financial capability and to determine the offeror's financial condition:

(a) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm.

(b) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash within the firm or branch performing the contract.

(c) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial crisis, and credit arrangements.

(d) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions.

(e) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business.

(f) Any other financial information deemed necessary.

(g) A Dun and Bradstreet Report on the company.

SUBPART 832.4 – ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

[Deviation per Class Deviation 832.202-1 and 832.402 (VAIQ 7640793), dated December 2, 2015, to delegate approval authority from the DSPE to the HCAs or designee for making findings and determinations and approval of contract terms for advance payments.]

832.402 General.

(c)(1)(iii) The authority to make the determination required by FAR 32.402(c)(1)(iii) and to approve contract terms is delegated to the head of the contracting activity (HCA). The request for approval shall include the information required by FAR 32.409-1 and shall address the standards for advance payment in FAR 32.402(c)(2). HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on number of contracts for non-commercial items with advance payments approved in the previous fiscal year. The report shall include the contract number and amount, the amount of the advance payment, and the kind and amount of security obtained for the advance.

832.404 Exclusions.

(a) Under 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(b) Under 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(c) Under 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

SUBPART 832.5 – PROGRESS PAYMENTS BASED ON COSTS

832.502 Pre-award matters.

832.502-2 Contract finance office clearance.

Contracting officers must obtain approval from the DSPE before taking the actions listed in FAR 32.502-2. Full justification and the recommendations of the contracting officer must accompany requests for approval.

SUBPART 832.8 – ASSIGNMENT OF CLAIMS

832.805 Procedure.

832.805-70 Distribution/notification of assignment of claims.

(a) Prior to acknowledgement of receipt, in addition to the requirements of FAR 32.805(d), the contracting officer shall obtain legal review of the assignment (see 801.602-75(a)(7)). Upon 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 Accountability Office 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 the field.

SUBPART 832.9 – PROMPT PAYMENT

832.904 Determining payment due dates.

(a) 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. Based on this analysis, contracting officers may, when authorized by FAR 32.904, modify the number of days allowed for notifying contractors of defects in invoices or, for construction solicitations, the number of days allowed for payment of invoices specified in the applicable prompt payment clause. Changes, if any, should be made before issuing the solicitation.

(b)(1) For construction solicitations, the analysis specified in paragraph (a) of this section may routinely take more than the 7 days provided in paragraph (a)(2) of the FAR clause at 52.232-27, Prompt Payment for Construction Contracts, to evaluate and return defective progress payment invoices.

(2) It also may take more than the 14 days provided in paragraph (a)(1)(i)(A) of the prompt payment clause to adequately inspect the work, determine the adequacy of the contractor's performance, approve, and pay progress payment invoices.

(3) Contracting officers should consider the following and, if necessary, revise the number of days stated in paragraphs (a)(2) and (a)(1)(i)(A) of the prompt payment clause before issuing construction solicitations (see FAR 32.904(d)(1)(i)):

(i)) Recent interest payment history.

(ii) The complexity of the project.

(iii) Workload.

(iv) Work site location.

(4) In no event may the number of days be set in excess of 14 days for return of a defective progress payment invoice or 30 days for payment of the invoice.

SUBPART 832.11 – ELECTRONIC FUNDS TRANSFER

832.1106 EFT mechanisms.

(a) The Assistant Secretary for Management 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) The Assistant Secretary for Management 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 832.70—ELECTRONIC INVOICING REQUIREMENTS

832.7000 General.

This subpart prescribes requirements and procedures for submitting and processing payment requests in electronic form.

832.7001 Definitions.

As used in this subpart:

(a) *Contract financing payment* has the meaning given in FAR 32.001.

(b) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(c) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in VAAR 832.7002-1. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(d) *Invoice payment* has the meaning given in FAR 32.001.

(e) *Payment request* means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

832.7002 Electronic payment requests.

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.7002-1 Data transmission.

The contractor shall submit electronic payment requests through:

(a) VA's Electronic Invoice Presentment and Payment System (See Web site at https://www.fsc.va.gov/einvoice.asp); or,

(b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (http://www.x12.org) includes additional information on EDI 810 and 811 formats.

832.7002-2 Contract clause.

The contracting officer shall insert the clause at 852.232-72, Electronic submission of payment requests, in all solicitations and contracts.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.
842.000 Scope of part.
842.070 Definitions.

Subpart 842.1 – Contract Audit Services

842.101 Contract audit responsibilities.
842.102 Assignment of contract audit services.

Subpart 842.7 – Indirect Cost Rates

842.705 Final indirect cost rates.

Subpart 842.8 – Disallowance of Costs

842.801 Notice of intent to disallow costs.
842.801-70 Audit assistance prior to disallowing costs.
842.803 Disallowing costs after incurrence.

Subpart 842.12 – Novation and Change of Name Agreements

842.1203 Processing agreements.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

This page intentionally left blank.

842.000 Scope of part.

This part applies to all contracts, whether awarded through sealed bidding or negotiation.

842.070 Definitions.

Contract administration is the coordination of actions required for the performance of a contract. This includes the contracting officer's guidance and supervision necessary to assure that the contractor fulfills all contractual obligations.

SUBPART 842.1 – CONTRACT AUDIT SERVICES

842.101 Contract audit responsibilities.

(a) Contracting officers may use the support services of other agencies to the extent feasible. Examples of such services include: pre-award surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Contracting officers obtaining support services from any other Government department or agency must do so on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding between the parties to the agreement. The agreement should clearly state the following:

(1) The accord reached between the two parties involved, especially the obligations assumed and the rights granted each party.

(2) The resources that both the supplying and receiving parties will provide.

(3) The funding and reimbursement arrangements.

(4) Clauses permitting revisions, modifications, or cancellation of the agreement.

[Deviation per Class Deviation 842.102, Assignment of Contract Audit Services, dated September 29, 2015, to authorize CFM to obtain audit services directly from GSA Schedule 520, Financial and Performance Audits contractors through Fiscal Year 2020.]

842.102 Assignment of contract audit services.

(a) When required, contracting officers shall request the assistance of the VA Office of the Inspector General (OIG), Office of Contract Review, to provide pre- and post-award audit, review, and advisory services associated with the award or modification of:

(1) Federal Supply Schedule and other contracts awarded by the VA National Acquisition Center;

(2) Scarce medical specialist or sharing contracts awarded under the authority of 38 U.S.C. 7409 or 8153, and;

(3) Claims involving such contracts.

(b) Contracting officers may request the assistance of either the VA OIG Office of Contract Review or the Defense Contract Audit Agency (DCAA) to provide pre- and post-award audit, review, and advisory services associated with other types of contracts or claims.

(c) Alternate audit and assistance services for Construction Facilities Management (CFM)-awarded major architect-engineering services contracts. Contracting officers obtaining pre- and post-award audit, review and advisory services for award of major Architect/Engineer contracts as well as A/E Indefinite Delivery Indefinite Quantity Multiple-award contracts may obtain such services from GSA Schedule 520, Financial and Performance Audits, through fiscal year 2020.

SUBPART 842.7 – INDIRECT COST RATES

842.705 Final indirect cost rates.

(a) Except when the quick-closeout procedures described in FAR 42.708 are used, contracting officers must request audits on proposed final indirect cost rates and billing rates for use in cost reimbursement, fixed-price incentive, and fixed-price redeterminable contracts as prescribed in FAR Subpart 42.7.

(b) When the quick closeout procedures are used, the contracting officers must perform a review and validation of the contractor's data for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

SUBPART 842.8 – DISALLOWANCE OF COSTS

842.801 Notice of intent to disallow costs.

842.801-70 Audit assistance prior to disallowing costs.

If a contracting officer determines that costs should be disallowed during the performance of a cost reimbursement, fixed-price incentive, or fixed-price redetermination contract exceeding the thresholds specified in FAR 15.403-4, the contracting officer must request audit assistance. The VA OIG shall conduct audits of contracts for health care resources and contracting officers shall request such audits directly from that office. For all other types of contracts, the contracting officer must obtain an audit control number from Acquisition Resources Service and send a formal request to conduct the audit directly to the nearest Defense Contract Audit Agency (DCAA) office, referencing the audit control number and the project number (if any).

842.803 Disallowing costs after incurrence.

Contracting officers may approve or disapprove contractors' vouchers for payment and process them to the servicing fiscal office. Such approval or disapproval must be within the limitations of the contracting officer's warrant and the contract for which the voucher is submitted must be within the contracting officer's delegation of contracting authority.

SUBPART 842.12 – NOVATION AND CHANGE-OF-NAME AGREEMENTS

842.1203 Processing agreements.

Before execution of novation and change-of-name agreements, contracting officers must submit all supporting agreements and documentation to the OGC for review as to legal sufficiency.

This page intentionally left blank.

SUBCHAPTER H—CLAUSES AND FORMS

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

Subpart 852.1 – Instructions for Using Provisions and Clauses

852.101 Using Part 852.
852.102 Incorporating provisions and clauses.

Subpart 852.2 – Text of Provisions and Clauses

852.203-70 Commercial advertising.
852.203-71 Display of Department of Veterans Affairs hotline poster.
852.207-70 Report of employment under commercial activities.
852.209-70 Organizational conflicts of interest.
852.211-70 Service data manuals.
852.211-71 Special notice.
852.211-72 Technical industry standards.
852.211-73 Brand name or equal.
852.211-74 Liquidated damages.
852.211-75 Product specifications.
852.214-70 Caution to bidders – bid envelopes.
852.214-71 Restrictions on alternate item(s).
852.214-72 Alternate item(s).
852.214-73 Alternate packaging and packing.
852.214-74 Bid samples.
852.216-70 [Reserved]
852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.
852.215-71 Evaluation Factor Commitments.
852.219-9 VA Small Business Subcontracting Plan Minimum Requirements
852.219-10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION)
852.219-11 VA Notice of Total Veteran-Owned Small Business Set-Aside. (DEVIATION)
852.219-71 VA Mentor-Protégé Program.
852.219-72 Evaluation Factor for Participation in the VA Mentor-Protégé Program.
852.222-70 Contract Work Hours and Safety Standards Act – nursing home care contract supplement.
852.228-70 Bond premium adjustment.
852.228-71 Indemnification and insurance.
852.228-72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.
852.229-70 Sales or use taxes.
852.229-71 [Reserved]
852.232-72 Electronic submission of payment requests.

852.233-70 Protest content/alternative dispute resolution.
852.233-71 Alternate protest procedure.
852.236-70 [Reserved]
852.236-71 Specifications and drawings for construction.
852.236-72 Performance of work by the contractor.
852.236-73 [Reserved]
852.236-74 Inspection of construction.

852.236-75 [Reserved]
852.236-76 Correspondence.
852.236-77 Reference to “standards.”
852.236-78 Government supervision.
852.236-79 Daily report of workers and material.
852.236-80 Subcontracts and work coordination.
852.236-81 [Reserved].
852.236-82 Payments under fixed-price construction contracts (without NAS).
852.236-83 Payments under fixed-price construction contracts (including NAS).
852.236-84 Schedule of work progress.
852.236-85 Supplementary labor standards provisions.
852.236-86 Worker’s compensation.
852.236-87 Accident prevention.
852.236-88 Contract changes – supplement.
852.236-89 Buy American Act.
852.236-90 Restriction on submission and use of equal products.
852.236-91 Special notes.
852.237-7 Indemnification and medical liability insurance.
852.237-70 Contractor responsibilities.
852.246-70 Guarantee.
852.246-71 Inspection.
852.246-72 Frozen processed foods.
852.246-73 Noncompliance with packaging, packing and/or marking requirements.
852.246-74 Special warranties.
852.246-75 Warranties for construction – guarantee period services.
852.247-70 Determining transportation costs for bid evaluation.
852.252-70 Solicitation provisions or clauses incorporated by reference.
852.270-1 Representatives of contracting officers.
852.270-2 Bread and bakery products – quantities.
852.270-3 Purchase of shellfish.
852.271-70 Nondiscrimination in services provided to beneficiaries.
852.271-71 [Reserved]
852.271-72 Time spent by counselee in counseling process.
852.271-73 Use and publication of counseling results.
852.271-74 Inspection.

852.271-75 Extension of contract period.
852.273-70 Late offers.
852.273-71 Alternative negotiation techniques.
852.273-72 Alternative evaluation.
852.273-73 Evaluation – health-care resources.
852.273-74 Award without exchanges.

AUTHORITY: 38 U.S.C. 501, 8127, 8128, and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

This page intentionally left blank.

SUBPART 852.1 – INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

852.101 Using part 852.

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision and clause numbering are as prescribed in FAR 52.101 (e.g., supplementary construction clauses under Part 836 are numbered 852.236-71, 852.236-72, etc.).

852.102 Incorporating provisions and clauses.

(a) As authorized by FAR 52.102(c), any 48 CFR Chapter 8 (VAAR) provision or clause may be incorporated in a quotation, solicitation, or contract by reference, provided the contracting officer complies with the requirements stated in FAR 52.102(c)(1), (c)(2), and (c)(3). To ensure compliance with FAR 52.102(c)(1) and (c)(2), contracting officers shall insert the provision found at 852.252-70, Solicitation provisions or clauses incorporated by reference, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

(b) For any FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert the title of the provision or clause and the paragraph that requires completion in full text in the quotation, solicitation, or contract. The balance of the provision or clause may be incorporated by reference.

(c) When one or more FAR or 48 CFR Chapter 8 (VAAR) provisions, or portions thereof, are incorporated in a quotation or solicitation by reference, the contracting officer shall insert in the quotation or solicitation the provision found at FAR 52.252-1, Solicitation Provisions Incorporated by Reference.

(d) When one or more FAR or 48 CFR Chapter 8 (VAAR) clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the quotation, solicitation, or contract the clause found at FAR 52.252-2, Clauses Incorporated by Reference.

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: http://www.acquisition.gov/comp/far/index.html

(f) If one or more 48 CFR Chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: http://www1.va.gov/oamm/acquisitions/ars/policyreg/vaar/index.htm

SUBPART 852.2 – TEXTS OF PROVISIONS AND CLAUSES

852.203-70 Commercial advertising.

As prescribed in 803.570-2, insert the following clause:

COMMERCIAL ADVERTISING (JAN 2008)

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor.

(End of clause)

852.203-71 Display of Department of Veterans Affairs hotline poster.

As prescribed in 803.7001, insert the following clause:

DISPLAY OF DEPARTMENT OF VETERANS AFFAIRS HOTLINE POSTER (DEC 1992)

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently, in common work areas within business segments performing work under VA contracts, Department of Veterans Affairs Hotline posters prepared by the VA Office of Inspector General.

(b) Department of Veterans Affairs Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043-4647.

(c) The Contractor need not comply with paragraph (a) above if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-77 and 873.110, the following clause will be included in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 that may result in conversion from in-house to contract performance of work:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (JAN 2008)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal personnel the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.*

(1) *Adversely affected Federal personnel* means:

(i) Permanent Federal personnel who are assigned to the government commercial activity, or

(ii) Federal personnel who are identified for release from their competitive levels or separated as a result of the contract.

(2) *Employment openings* means position vacancies created by this contract that the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award. The term includes positions within a 50-mile radius of the commercial activity that indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) *Contract start date* means the first day of contractor performance.

(c) Filling employment openings.

(1) For a period beginning with contract award and ending 90 calendar days after the contract start date, no person other than adversely affected Federal personnel on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal personnel identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal personnel on the latest current listing provided by the contracting officer.

(d) Contracting reporting requirements.

(1) No later than 5 working days after contract award, the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits, and

(ii) Sufficient job application forms for adversely affected Federal personnel.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal personnel offered an employment opening;

(ii) The date the offer was made;

(iii) A brief description of the position;

(iv) The date of acceptance of the offer and the effective date of employment;

(v) The date of rejection of the offer, if applicable, and the salary and benefits contained in the rejected offer; and

(vi) The names of any adversely affected Federal personnel who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 calendar days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within 5 working days of such hiring or termination.

(e) Information provided to the contractor.

(1) No later than 10 calendar days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal personnel exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected Federal personnel to other Federal positions.

(3) For a period of up to 90 calendar days after the contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal personnel reflecting personnel who were recently released from their competitive levels or separated as a result of the contract award.

(f) Qualifications determination. The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal personnel for any employment openings. However, adversely affected Federal personnel who held jobs in the Government commercial activity that directly correspond to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal personnel for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) Relating to other statutes, regulations and employment policies. The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities, or persons with disabilities.

(h) Penalty for noncompliance. Failure of the contractor to comply with any provision of the clause may be grounds for termination for default.

(End of clause)

852.209-70 Organizational conflicts of interest.

As prescribed in 809.507-1(b), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST (JAN 2008)

(a) It is in the best interest of the Government to avoid situations which might create an organizational conflict of interest or where the offeror's performance of work under the contract may provide the contractor with an unfair competitive advantage. The term "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage.

(b) The offeror shall provide a statement with its offer which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

(c) Based on this information and any other information solicited or obtained by the contracting officer, the contracting officer may determine that an organizational conflict of interest exists which would warrant disqualifying the contractor for award of the contract unless the organizational conflict of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the contracting officer finds that it is in the best interest of the United States to award the contract, the contracting officer shall request a waiver in accordance with FAR 9.503 and 48 CFR 809.503.

(d) Nondisclosure or misrepresentation of actual or potential organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of provision)

852.211-70 Service data manuals.

(a) As prescribed in 811.107(a), insert the following clause:

SERVICE DATA MANUALS (NOV 1984)

(a) The successful bidder will supply operation/maintenance (service data) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in (b) through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his/her responsibility in supplying the technical data called for therein.

(b) Title Page and Front Matter. The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustrations and a frontispiece (photograph or line drawing) depicting the equipment.

(c) Section I, General Description. This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) Section II, Installation. Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.).

(e) Section III, Operation. Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein. When applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions that are software related.

(f) Section IV, Principles of Operation. This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) Section V, Maintenance. The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficient data will be provided to enable their purchase by the Department of Veterans Affairs. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) Section VI, Replacement Parts List. The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) Section VII, Drawings. Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall

include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or productions sketches.

(End of clause)

Alternate I (JAN 2008). If the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, insert the following paragraph:

(j) Initial purchase. The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.211-70(a) to the Service and Reclamation Division, Hines, IL. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.211-70(a) with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(b) As prescribed in 811.107(b), insert the following clause:

SERVICE DATA MANUALS, MECHANICAL EQUIPMENT (JAN 2008)

The contractor agrees to furnish two hard copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of clause)

852.211-71 Special notice.

As prescribed in 870.112, insert the following provision:

SPECIAL NOTICE (JAN 2008)

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature that qualifies the offer will require rejection of the offer. However, within 5 days after award of the contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements. The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment being proposed. The notice

of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefore. If the equipment is disapproved by the Government, the contractor will be subject to action under the Default or Termination for Cause provision of this contract. However, prior to default or termination for cause action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of provision)

852.211-72 Technical industry standards.

As prescribed in 811.103-70, insert the following provision:

TECHNICAL INDUSTRY STANDARDS (JAN 2008)

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the [ ]* and [ ]* as to [ ]**. The successful bidder or offeror will be required to submit proof that the item(s) he/she furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. Proof may also be furnished in the form of a certificate from one of the above listed organizations certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of provision)

*Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

**Insert pertinent standards, e.g., fire and casualty, safety and fire protection.

852.211-73 Brand name or equal.

As prescribed in 811.104-71, insert the following clause:

BRAND NAME OR EQUAL (JAN 2008)

(Note: As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in the bid that the bidder is offering an "equal" product, the bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information that is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to:

(i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and

(ii) Establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall:

(i) Include in his/her bid a clear description of such proposed modifications, and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

852.211-74 Liquidated damages.

As prescribed in 811.503 and 836.206, the contracting officer may insert the following clause when appropriate:

LIQUIDATED DAMAGES (JAN 2008)

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of clause)

852.211-75 Product specifications.

As prescribed in 811.204, insert the following the following clause:

PRODUCT SPECIFICATIONS (JAN 2008)

The products offered under this solicitation shall be type_____, grade_____, in accordance with [type of specification] No. _____, dated_____and amendment _____ dated_____, except for paragraphs_____and _____ which are amended as follows: [List any amendments to the specifications]

(End of clause)

852.214-70 Caution to bidders – bid envelopes.

As provided in 814.201-6(a), the following provision will be included in all invitations for bid:

CAUTION TO BIDDERS – BID ENVELOPES (JAN 2008)

It is the responsibility of each bidder to take all necessary precautions, including the use of proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, use any suitable envelope, identified by the invitation number and bid opening time and date. If an Optional Form (OF) 17, Sealed Bid Label, is furnished with this invitation in lieu of a bid envelope, the bidder is advised to complete and affix the OF 17 to the lower left corner of the envelope used in submitting the bid.

(End of provision)

852.214-71 Restrictions on alternate item(s).

As prescribed in 814.201-6(b)(1), insert the following provision:

RESTRICTIONS ON ALTERNATE ITEM(S) (JAN 2008)

Bids on [ ]* will be considered only if acceptable bids on [ ]** are not received or do not satisfy the total requirement.

(End of provision)

*Contracting officer will insert an alternate item that is considered acceptable.

**Contracting officer will insert the required item and item number.

852.214-72 Alternate item(s).

As prescribed in 814.201-6(b)(2), insert the following provision:

ALTERNATE ITEM(S) (JAN 2008)

Bids on [ ]* will be given equal consideration along with bids on [ ]** and any such bids received may be accepted if to the advantage of the Government.

Tie bids will be decided in favor of [ ].**

(End of provision)

*Contracting officer will insert an alternate item that is considered acceptable.

**Contracting officer will insert the required item and item number.

852.214-73 Alternate packaging and packing.

As prescribed in 814.201-6(b)(3), insert the following provision:

ALTERNATE PACKAGING AND PACKING (JAN 2008)

The bidders offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of provision)

852.214-74 Bid samples.

As prescribed in 814.201-6(c), insert the following provision:

BID SAMPLES (JAN 2008)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked with the complete lettering/numbering and description of the related bid item(s); the number of the Invitation for Bids; and the name of the bidder submitting the bid sample(s). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all changes pertaining to the preparation and transportation of bid sample(s) must be prepaid by the bidder. Bid sample(s) must be received at the location specified in the solicitation by the time and date for receipt of bids.

(End of provision)

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises provisions and clauses at VAAR 852.215-70, 852.219-10 and 852.219-11 to update the web address for the VIP database and to adjust the limitations on subcontracting to comply with Small Business regulations. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

852.215-70 Service-disabled veteran-owned and veteran-owned small business evaluation factors.

As prescribed in 815.304-71(a), insert the following provision:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS
(JUL 2016) (DEVIATION)

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database (https://www.vip.vetbiz.gov).

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (https://www.vip.vetbiz.gov).

(End of clause)

852.215-71 Evaluation Factor Commitments.

As prescribed in 815.304-71(b), insert the following clause:

EVALUATION FACTOR COMMITMENTS (DEC 2009)

The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(End of clause)

[Deviation per Class Deviation—816.504, Indefinite-quantity contracts (VAIQ 7287642), dated October 11, 2012, to comply with the FAR requirement that the contract clauses prescribed in VAAR 816.504 supplement the FAR to satisfy the specific needs of the VA. Particularly, this deviation is to **suspend clause 852.216-70, Estimated quantities.**]

852.216-70 [Reserved]

852.219-9 VA Small Business Subcontracting Plan Minimum Requirements.

As prescribed in subpart 819.709, insert the following clause:

VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009)

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

(c) For a commercial plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small businesses shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in 819.407.

(End of clause)

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises provisions and clauses at VAAR 852.215-70, 852.219-10 and 852.219-11 to update the web address for the VIP database and to adjust the limitations on subcontracting to comply with Small Business regulations. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

852.219-10 VA Notice of total service-disabled veteran-owned small business set-aside.

As prescribed in 819.7009, insert the following clause:

VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (JUL 2016) (DEVIATION)

(a) Definition. For the Department of Veterans Affairs, "Service-disabled veteran-owned small business concern or SDVSOB":

(1) Means a small business concern:

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans or eligible surviving spouses (see VAAR 802.201 Surviving Spouse definition);

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans (or eligible surviving spouses) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR 74 and is so listed in the Vendor Information Pages database, (https://www.vip.vetbiz.gov); and

(v) The business will comply with subcontracting limitations in 13 CFR 125.6, as applicable

(2) “Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(b) General.

(1) Offers are solicited only from verified service-disabled veteran-owned small business concerns. Offers received from concerns that are not verified service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a verified service-disabled veteran-owned small business concern.

(c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, the concern will comply with the limitation on subcontracting requirements in 13 CFR §125.6.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if the joint venture complies with the requirements in 13 CFR 125.15, provided that any reference therein to SDVO SBC is to be construed to apply to a VA verified SDVOSB as appropriate.

(e) Any service-disabled veteran-owned small business concern (non-manufacturer) must meet the requirements in FAR 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises provisions and clauses at VAAR 852.215-70, 852.219-10 and 852.219-11, to update the web address for the VIP database and to adjust the limitations on subcontracting to comply with Small Business regulations. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

852.219-11 VA notice of total veteran-owned small business set-aside.

As prescribed in 819.7009, insert the following clause:

VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE (JUL 2016) (DEVIATION)

(a) Definition. For the Department of Veterans Affairs, "Veteran-owned small business or VOSB."—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans;

(ii) The management and daily business operations of which are controlled by one or more veterans;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR 74 and is so listed in the Vendor Information Pages database, (https://www.vip.vetbiz.gov): and (v) The business will comply with subcontracting limitations in 13 CFR 125.6, as applicable

(2) "Veteran" is defined in 38 U.S.C. 101(2).

(b) General.

(1) Offers are solicited only from verified veteran-owned small business concerns. All service-disabled veteran-owned small businesses are also determined to be veteran-owned small businesses if they meet the criteria identified in paragraph (a)(1) of this section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a verified veteran-owned small business concern.

(c) Agreement. A veteran-owned small business concern agrees that in the performance of the contract, the concern will comply with the limitation on subcontracting requirements in 13 CFR §125.6.

(d) A joint venture may be considered a veteran-owned small business concern if the joint venture complies with the requirements in 13 CFR 125.15, provided that any reference therein to SDVO SBC is to be construed to apply to a VA verified SDVOSB and/or VOSB as appropriate..

(e) Any veteran-owned small business concern (non-manufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

852.219-71 VA Mentor-Protégé Program.

As prescribed in 819.7115(a), insert the following clause:

VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)

(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as subcontractors.

(b) The program consists of:

(1) Mentor firms, which are contractors capable of providing developmental assistance;

(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and

(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.

(c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a mentor firm in providing assistance to a protégé firm and apply those costs for purposes of determining whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information.

(End of clause)

852.219-72 Evaluation factor for participation in the VA mentor-protégé program.

As prescribed in 819.7115(b), insert the following clause:

EVALUATION FACTOR FOR PARTICIPATION IN THE VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)

This solicitation contains an evaluation factor or sub-factor regarding participation in the VA Mentor-Protégé Program. In order to receive credit under the evaluation factor or sub-factor, the offeror must provide with its proposal a copy of a signed letter issued by the VA Office of Small and Disadvantaged Business Utilization approving the offeror's Mentor-Protégé Agreement.

(End of clause)

852.222-70 Contract Work-Hours and Safety Standards Act – nursing home care contract supplement.

As prescribed in 822.305, for nursing home care requirements, insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARD ACT – NURSING HOME CARE CONTRACT SUPPLEMENT (JAN 2008)

The following exemption to FAR clause 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, applies to this contract:

A contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), provided:

(a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(b) There is an agreement or understanding between the contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;

(c) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

(d) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of clause)

852.228-70 Bond premium adjustment.

As prescribed in 828.106-70, insert the following clause:

BOND PREMIUM ADJUSTMENT (JAN 2008)

When net changes in original contract price affect the premium of a Corporate Surety Bond by $5 or more, the Government, in determining the basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of clause)

852.228-71 Indemnification and insurance.

As prescribed in 828.306, insert the following clause:

INDEMNIFICATION AND INSURANCE (JAN 2008)

(a) Indemnification. The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servant, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) Insurance. Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workers' compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type shall, in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. State-approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. [Contracting Officer's Note: In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least $200,000 per passenger and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.]

(End of clause)

852.228-72 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonds.

As prescribed in 828.106–71, insert the following clause:

ASSISTING SERVICE-DISABLED VETERAN-OWNED AND VETERAN OWNED SMALL BUSINESSES IN OBTAINING BONDS (JAN 2008)

Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist protégé firms under VA's Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

(End of clause)

852.229-70 Sales or use taxes.

As prescribed in 829.302-70, insert the following provision:

SALES OR USE TAXES (JAN 2008)

This provision replaces paragraph (k) of Federal Acquisition Regulation clause 52.212-4, Contract Terms and Conditions—Commercial Items. The articles listed in this solicitation will be purchased from the personal funds of patients and prices submitted herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this solicitation.

(End of clause)

852.229-71 [Reserved]

852.232-72 Electronic submission of payment requests.

As prescribed in 832.7002-2, insert the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2012)

(a) *Definitions*. As used in this clause-

(1) *Contract financing payment* has the meaning given in FAR 32.001.

(2) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) *Invoice payment* has the meaning given in FAR 32.001.

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) *Electronic Payment Requests*. Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data Transmission*. A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System. (See Web site at http://www.fsc.va.gov/einvoice.asp.)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (http://www.x12.org/) includes additional information on EDI 810 and 811 formats.

(d) *Invoice requirements*. Invoices shall comply with FAR 32.905.

(e) *Exceptions*. If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of clause)

852.233-70 Protest content/alternative dispute resolution.

As prescribed in 833.106, insert the following provision:

PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, fax number, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's representative and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of provision)

852.233-71 Alternate protest procedure.

As prescribed in 833.106, insert the following provision:

ALTERNATE PROTEST PROCEDURE (JAN 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, or for solicitations issued by the Office of Construction and Facilities Management, the Director, Office of Construction and Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(End of provision)

852.236-70 [Reserved]

852.236-71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (JUL 2002)

The clause entitled "Specifications and Drawings for Construction" in FAR 52.236-21 is supplemented as follows:

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of clause)

852.236-72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

PERFORMANCE OF WORK BY THE CONTRACTOR (JUL 2002)

The clause entitled "Performance of Work by the Contractor" in FAR 52.236-1 is supplemented as follows:

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by the contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The contractor shall submit, simultaneously with the schedule of costs required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to

be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236-1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at 52.236-1.

(End of clause)

Alternate I (JAN 2008). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) The contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01310 or 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

852.236-73 [Reserved]

852.236-74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

INSPECTION OF CONSTRUCTION (JUL 2002)

The clause entitled "Inspection of Construction" in FAR 52.246-12 is supplemented as follows:

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of clause)

852.236-75 [Reserved]

852.236-76 Correspondence.

As prescribed in 836.570, insert the following clause:

CORRESPONDENCE (APR 1984)

All correspondence relative to this contract shall bear the Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

(End of clause)

852.236-77 Reference to "standards".

As prescribed in 836.571, insert the following clause:

REFERENCE TO "STANDARDS" (JUL 2002)

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in the specifications.

(End of clause)

852.236-78 Government supervision.

As prescribed in 836.572, insert the following clause:

GOVERNMENT SUPERVISION (APR 1984)

(a) The work will be under the direction of the Department of Veterans Affairs contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may, by written direction, make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of clause)

852.236-79 Daily report of workers and material.

As prescribed in 836.573, insert the following clause:

DAILY REPORT OF WORKERS AND MATERIAL (APR 1984)

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work that they perform, such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of clause)

852.236-80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

SUBCONTRACTS AND WORK COORDINATION (APR 1984)

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of clause)

Alternate I (JUL 2002). For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades

coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

852.236-81 [Reserved]

852.236-82 Payments under fixed-price construction contracts (without NAS).

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)."

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1984)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many sub-branches as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the sub-branches, as applied to each branch, shall equal the total cost of such branch. The total cost of all branches shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed in the table in this paragraph (b)(5). The percentages listed below are proportions of the cost listed in the contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of clause)

Alternate I (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program that shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236-83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled "Network Analysis System (NAS)."

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JUL 2002)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where the performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section Network Analysis System (NAS), or to process the Interim Arrow Diagram/Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this section. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of clause)

Alternate I (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CMP cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and

what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236-84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

SCHEDULE OF WORK PROGRESS (NOV 1984)

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of clause)

852.236-85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

SUPPLEMENTARY LABOR STANDARDS PROVISIONS (APR 1984)

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of clause)

852.236-86 Workers' compensation.

As prescribed in 836.577, insert the following clause:

WORKERS' COMPENSATION (JAN 2008)

Public Law 107-217 (40 U.S.C. 3172) authorizes the constituted authority of States to apply their workers compensation laws to all lands and premises owned or held by the United States.

(End of clause)

852.236-87 Accident prevention.

As prescribed in 836.513, insert the following clause:

ACCIDENT PREVENTION (SEP 1993)

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the

Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with FAR 52.236-13, Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of clause)

852.236-88 Contract changes – supplement.

As prescribed in 836.578, insert the following clause:

CONTRACT CHANGES – SUPPLEMENT (JUL 2002)

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

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over $500,000.

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.403, the cost or pricing data shall be submitted in accordance with FAR 15.403-5.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal, which includes the information required by paragraph (a)(1), for cost of changes in work within 30 calendar days.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by

paragraphs (a)(1) or (a)(2) of this clause is not received within 30 calendar days or if agreement has not been reached.

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

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing $500,000 or less:

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data or information other than cost or pricing data are required under FAR 15.403, the data shall be submitted in accordance with FAR 15.403-5. No itemized breakdown will be required for proposals amounting to less than $1,000.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit within 30 calendar days, a proposal that includes the information required by paragraph (b)(1) for the cost of the changes in work.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (b)(1) or (b)(2) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(4) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent

overhead and 10 percent profit on the first $20,000; 7-1/2 percent overhead and 7-1/2 percent profit on the next $30,000; 5 percent overhead and 5 percent profit on balance over $50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(5) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first $20,000; 7-1/2 percent fee on the next $30,000; and 5 percent fee on balance over $50,000.

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

(7) Where the contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

(8) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(9) Cost of Federal Old Age Benefit (Social Security) tax and of Worker's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractors' proposals.

(10) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefore. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and

expediting relative to contract changes are associated with field and office supervision and are considered to be included in the contractor's overhead and/or fee percentage.

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

(End of clause)

852.236-89 Buy American Act.

As prescribed in Table 825.1102, insert the following clause:

BUY AMERICAN ACT (JAN 2008)

(a) Reference is made to the clause entitled "Buy American Act – Construction Materials," FAR 52.225-9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) it was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with Subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of clause)

Alternate I (JAN 2008). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act – Construction Materials under Trade Agreements," FAR 52.225-11.

(b) The restrictions contained in this clause 852.236-89 are waived for designated country construction material as defined in FAR 52.225-11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-11, VA does not anticipate accepting an offer that includes foreign construction material, other than designated country construction material.

Alternate II (JAN 2008). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act – Construction Materials under Trade Agreements," FAR 52.225-11 and its Alternate I.

(b) The restrictions contained in this clause 852.236-89 are waived for World Trade Organization (WTO) Government Procurement Agreement (GPA) country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, as defined in FAR 52.225-11 and its Alternate I. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-11, VA does not anticipate accepting an offer that includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

852.236-90 Restriction on submission and use of equal products.

As prescribed in 836.202(c), the following clause shall be included in the solicitation if it is determined that only one product will meet the Government's minimum needs and the Department of Veterans Affairs will not allow the submission of "equal" products:

RESTRICTION ON SUBMISSION AND USE OF EQUAL PRODUCTS (NOV 1986)

The clause applies to the following items:

_____

_____

_____

Notwithstanding the "Material and Workmanship" clause of this contract, FAR 52.236-5(a), nor any other contractual provision, "equal" products will not be considered by the Department of Veterans Affairs and may not be used.

(End of clause)

852.236-91 Special notes.

As prescribed in 836.579, insert the following clause:

SPECIAL NOTES (JUL 2002)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration, or repair of buildings, structures, and communications facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted, the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their intended use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10-year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe weather in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of clause)

852.237-7 Indemnification and medical liability insurance.

As prescribed in 837.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 2008)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [Contracting Officer's Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.] However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of clause)

852.237-70 Contractor responsibilities.

As prescribed in 837.110, insert the following clause:

CONTRACTOR RESPONSIBILITIES (APR 1984)

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her

employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of [ ]. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting there from.

(End of clause)

852.246-70 Guarantee.

As prescribed in 846.302-70, insert the following clause:

GUARANTEE (JAN 2008)

The contractor guarantees the equipment against defective material, workmanship and performance for a period of [ ][1], said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period.

Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.[2]

(End of clause)

[1] Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

[2] The above clause will be modified to conform to standards of the industry involved.

852.246-71 Inspection.

As prescribed in 846.302-71(a), insert the following clause:

INSPECTION (JAN 2008)

Rejected goods will be held subject to contractors order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the contractor's account.

(End of clause)

Alternate I (JAN 2008). As provided in 846.302-71(b), insert the following clause:

INSPECTION (JAN 2008)

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of clause)

852.246-72 Frozen processed foods.

As prescribed in 846.302-72, insert the following clause:

FROZEN PROCESSED FOODS (JAN 2008)

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of clause)

852.246-73 Noncompliance with packaging, packing, and/or marking requirements.

As prescribed in 846.302-73, insert the following clause:

NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS (JAN 2008)

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of clause)

852.246-74 Special warranties.

As prescribed in 846.710-70, insert the following clause:

SPECIAL WARRANTIES (JAN 2008)

The clause entitled "Warranty of Construction" in FAR 52.246-21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246-21, Warranty of Construction, unless otherwise provided for in such special warranties.

(End of clause)

852.246-75 Warranty for construction – guarantee period services.

As prescribed in 846.710-71, insert the following clause:

WARRANTY FOR CONSTRUCTION – GUARANTEE PERIOD SERVICES (JAN 2008)

The clause entitled "Warranty of Construction" in FAR 52.246-21 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR 52.249-10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

852.247-70 Determining transportation costs for bid evaluation.

As prescribed in 847.305-70, insert the following provision:

DETERMINING TRANSPORTATION COSTS FOR BID EVALUATION (APR 1984)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

Anticipated demand	
Area destination	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of factors	20

(End of provision)

852.252-70 Solicitation provisions or clauses incorporated by reference.

As prescribed in 852.102(a), insert the following provision:

SOLICITATION PROVISIONS OR CLAUSES INCORPORATED BY REFERENCE (JAN 2008)

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the web sites provided in the provision at FAR 52.252-1, Solicitation Provisions Incorporated by Reference, or the clause at FAR 52.252-2, Clauses Incorporated by Reference. Copies may also be obtained from the contracting officer.

[Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer.]

(End of provision)

852.270-1 Representatives of contracting officers.

As prescribed in 801.603-70(d), insert the following provision:

REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally monitor the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation shall be furnished to the contractor.

(End of provision)

852.270-2 Bread and bakery products - quantities.

As prescribed in 870.111-3, insert the following clause:

BREAD AND BAKERY PRODUCTS – QUANTITIES (JAN 2008)

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Department of Veterans Affairs.

(End of clause)

852.270-3 Purchase of shellfish.

As prescribed in 870.111-3, insert the following clause:

PURCHASE OF SHELLFISH (APR 1984)

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

852.271-70 Nondiscrimination in services provided to beneficiaries.

As prescribed in 837.110-70 and 871.212, insert the following provision:

NONDISCRIMINATION IN SERVICES PROVIDED TO BENEFICIARIES (JAN 2008)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Department of Veterans Affairs, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of provision)

852.271-71 [Reserved]

852.271-72 Time spent by counselee in counseling process.

As prescribed in 871.212, insert the following clause:

TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (APR 1984)

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of clause)

852.271-73 Use and publication of counseling results.

As prescribed in 871.212, insert the following clause:

USE AND PUBLICATION OF COUNSELING RESULTS (JAN 2008)

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of clause)

852.271-74 Inspection.

As prescribed in 871.212, insert the following clause:

INSPECTION (JAN 2008)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and examine the training facilities, the work of the veterans in training under this contract, and the records of these operations.

(End of clause)

852.271-75 Extension of contract period.

As prescribed in 871.212, insert the following clause:

EXTENSION OF CONTRACT PERIOD (APR 1984)

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of clause)

852.273-70 Late offers.

As prescribed in 873.110(a), insert the following provision:

LATE OFFERS (JAN 2003)

This provision replaces paragraph (f) of FAR provision 52.212-1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

852.273-71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

ALTERNATIVE NEGOTIATION TECHNIQUES (JAN 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

852.273-72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

ALTERNATIVE EVALUATION (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by [Contracting officer insert description of how the information may be viewed electronically or otherwise]. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

852.273-73 Evaluation – health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212-2, the contracting officer may insert a provision substantially as follows:

EVALUATION – HEALTH-CARE RESOURCES (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:

[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

852.273-74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

AWARD WITHOUT EXCHANGES (JAN 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

This page intentionally left blank.

SUBCHAPTER H—CLAUSES AND FORMS

PART 853—FORMS

Sec.
853.000 Scope of part.

Subpart 853.1 – General

853.107 Obtaining forms.

Subpart 853.2 – Prescription of Forms

853.201 Federal acquisition system.
853.201-1 Contracting authority and responsibilities (SF 1402).
853.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).
853.215 Contracting by negotiation.
853.215-70 VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.
853.236 Construction and architect-engineer contracts.
853.236-70 VA Form 10-6298, Architect-Engineer Fee Proposal.
853.271 Loan Guaranty, Education and Vocational Rehabilitation and Employment Programs.
853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).
853.271-2 Education Programs.

Subpart 853.3 – Illustration of Forms

853.300 Scope of subpart.

AUTHORITY: 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

This page intentionally left blank.

853.000 Scope of part.

This part prescribes VA forms for use in the acquisition of goods and services. It only identifies forms that are used between VA and its contractors or the general public. It does not identify forms for uses internal to VA or between VA and another Federal agency.

SUBPART 853.1 – GENERAL

853.107 Obtaining forms.

The VA forms may be obtained from any VA contracting office or by requesting such forms from the Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUBPART 853.2 – PRESCRIPTION OF FORMS

853.201 Federal acquisition system.

853.201-1 Contracting authority and responsibilities (SF 1402).

Standard Form (SF) 1402, Certificate of Appointment, is used in accordance with FAR 1.603-3, Appointment, to appoint VA contracting officers under VA's Contracting Officer Certification Program (see 801.690-6).

853.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services:

(a) VA Forms 90-2138, Order for Supplies or Services, or 90-2138-ADP, Purchase Order for Supplies or Service, shall be used as indicated in 813.307. They may be used in lieu of OF 347, Order of Supplies and Services, or Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

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

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

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

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

[Deviation per Class Deviation— VAAR Subpart 813.307, Forms, and VAAR Subpart 853.213, Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348, dated March 31, 2017, increases the dollar threshold to the Simplified Acquisition Threshold for VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expires March 31, 2018, unless otherwise rescinded.]

(d) VA Form 10-2421, Prosthetics Authorization and Items and Services, will be used as prescribed in 813.307.

853.215 Contracting by negotiation.

853.215-70 VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA, will be used for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236-70 VA Form 10-6298, Architect-Engineer Fee Proposal.

VA Form 10-6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606-71.

853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.

853.271-2 Education Programs.

To obtain education or rehabilitation services, contracting officers may use an individual written contract or VA Form 28-1905, Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status.

SUBPART 853.3 – ILLUSTRATION OF FORMS

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with 853.107. VA forms may also be available on the Web at http://www.va.gov/vaforms/.

This page intentionally left blank.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

Sec.
873.101 Policy.
873.102 Definitions.
873.103 Priority sources.
873.104 Competition requirements.
873.105 Acquisition planning.
873.106 Presolicitation exchanges with industry.
873.107 Socioeconomic programs.
873.108 Publicizing contract actions.
873.109 General requirements for acquisition of health-care resources.
873.110 Solicitation provisions.
873.111 Acquisition strategies for health-care resources.
873.112 Evaluation information.
873.113 Exchanges with offerors.
873.114 Best value pool.
873.115 Proposal revisions.
873.116 Source selection decision.
873.117 Award to successful offeror.
873.118 Debriefings.

AUTHORITY: 38 U.S.C. 501 and 8151-8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

This page intentionally left blank.

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises VAAR 873.101 and VAAR 873.102 to reflect that to the extent not otherwise excluded by law, the Veterans First Contracting Program in VAAR subpart 819.70 applies to VA contracts under VAAR part 873 and has precedence over the other small business programs. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

873.101 Policy.

The simplified acquisition procedures set forth in this part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the FAR and other parts of the VAAR. When a policy in the FAR or parts of the VAAR is inconsistent with a policy in this part, the policy in part 873 takes precedence. These procedures contain more flexibility than provided in the FAR or elsewhere in the VAAR. (38 U.S.C. 8151-8153)

(a) General. To the extent not otherwise excluded by law, the Veterans First Contracting Program in subpart 819.70 applies to contracts under this part and has precedence over other small business programs.

(b) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by section 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program, as implemented in subpart 819.70. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with FAR 19.203, 819.203-70 and 819.7004.

(c) When there is need for a waiver, pursuant to 873.107, the OSDBU Director will be notified.

873.102 Definitions.

Commercial service means a service, except construction exceeding $2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

Health-care providers include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space. (38 U.S.C. 8153)

[Deviation per Class Deviation—Veterans First Contracting Program (VFCP 2016) dated July 25, 2016, revises VAAR 873.101 and VAAR 873.102 to reflect that to the extent not otherwise excluded by law, the Veterans First Contracting Program in VAAR subpart 819.70 applies to VA contracts under VAAR part 873 and has precedence over the other small business programs. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

873.103 Priority sources.

Without regard to FAR 8.002(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled (AbilityOne) (see FAR subpart 8.7), there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. (38 U.S.C. 8151-8153) See 873.101 (a) – (b) for applicability of 38 U.S.C. 8127 and 8128.

873.104 Competition requirements.

(a) Without regard to FAR Part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis. (38 U.S.C. 8153)

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR Part 6, is not required. (38 U.S.C. 8153)

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted. (38 U.S.C. 8153)

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR Part 6. (38 U.S.C. 8153)

873.105 Acquisition planning.

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service. (38 U.S.C. 8153)

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108. (38 U.S.C. 8153)

(d) In lieu of the requirements of FAR Part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes – summarizing decisions, actions, and conclusions – shall be prepared and included in the contract file, along with a copy of the briefing materials.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR Part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft requests for proposals (RFPs);

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (e.g., Internet); and

(11) Use of the Central Contractor Registration (CCR) (http://www.bpn.gov/ccrinq/scripts/search.asp) and the "Advanced Search" feature on VetBiz Vendor Information Pages (http://vip.vetbiz.gov/general_user/search/default.asp) to search for vendors. (38 U.S.C. 8153).

873.107 Socioeconomic programs.

(a) Implementation. This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502-2, and 19.502-3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Rejecting Small Business Administration (SBA) recommendations.

(1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless the contracting officer makes a determination in writing that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding $5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding $5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the DSPE, whose decisions shall be final. (38 U.S.C. 8153)

(c) Contracting with the Small Business Administration (the 8(a) Program). The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) Certificates of Competency and determinations of responsibility. The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR Part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Government-wide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with

affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873. (38 U.S.C. 8153)

873.109 General requirements for acquisition of health-care resources.

(a) Source selection authority. Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873. (38 U.S.C. 8153)

(b) Statement of work/Specifications. Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.(38 U.S.C. 8153)

(c) Documentation. Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) Time for receipt of quotations or offers. (1) Without regard to FAR

5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) Cancellation of procurements. Without regard to FAR 14.404-1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government. (38 U.S.C. 8153)

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273-70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at 852.273-72, Alternative evaluation, in lieu of the provision at 52.212-2, Evaluation--Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212-2. (38 U.S.C. 8153)

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273-74, Award without exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at 52.207-3, Right of First Refusal of Employment, and the clause at 852.207-70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition.

These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) Request for quotations. (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR Part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) Sealed bidding. FAR Part 14 provides procedures for sealed bidding.

(c) Negotiated acquisitions. If the procedures of FAR Parts 12, 13, and 15 differ from the procedures of this Part, the procedures of this Part shall take precedence. (38 U.S.C. 8153)

(d) Multiphase acquisition technique. (1) General. Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in

the down-select phase. The contracting officer may down-select to a single offeror.

(2) First phase notice. In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Government-wide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) First phase responses. Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) First phase evaluation and down-select. The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) Subsequent phases. Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) Debriefing. Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition. (38 U.S.C. 8153)

(e) Alternative negotiation techniques. (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will

have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104). (38 U.S.C. 8153)

873.112 Evaluation information.

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications,

communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR Parts 3 and 24. (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the

contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer

may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506. (38 U.S.C. 8153)