



# VA Acquisition Regulation Update

**September 30, 2019**

**Number 2008-18**

1. **Material Transmitted:** The attached pages contain revisions to the Department of Veterans Affairs Acquisition Regulation (VAAR) parts 823, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace; 824, Protection of Privacy and Freedom of Information; 826, Other Socioeconomic Programs; 843, Contract Modifications, and affected parts 801, 836, and 852.

2. **Summary of Changes:** This VA Acquisition Regulation (VAAR) Update provides:

a. Revisions to the VAAR that were published in a Federal Register Notice as a final rule at [84 FR 45679](#) (document number 2019-18524) on August 30, 2019 with an effective date of September 30, 2019, and which adopted as a final rule the proposed rule published November 29, 2018.

b. Text revisions are listed and summarized below:

<b>VAAR Part/Subpart</b>	<b>Title</b>	<b>Change Summary</b>
801.106	OMB approval under the Paperwork Reduction Act.	Amended
823	Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace	Added
823.1	Sustainable Acquisition Policy	Added
823.103-70	Policy.	Added
823.103-71	Solicitation provision.	Added
823.3	Hazardous Material Identification and Material Safety Data	Added
823.300	Scope of subpart.	Added
823.303-70	Contract clause.	Added
824	Protection of Privacy and Freedom of Information	Revised
824.102	General.	Revised
824.103	Procedures.	Revised
824.2	Freedom of Information Act	Revised
824.203	Policy.	Revised
826	Other Socioeconomic Programs	Added
826.2	Disaster or Emergency Assistance Activities	Added
826.202-1	Local area set-aside.	Added
826.202-2	Evaluation preference.	Added
836.578	Changes – supplement.	Removed
843	Contract Modifications	Added
843.2	Change Orders	Added
843.205	Contract clauses.	Added
843.205-70	Contract changes—supplement.	Added
852	Solicitation Provisions and Contract Clauses	Revised
852.223-70	Instructions to offerors—Sustainable Acquisition Plan.	Added
852.223-71	Safety and Health.	Added
852.236-88	Contract changes – supplement.	Removed and Reserved
852.243-70	Construction Contract Changes—Supplement.	Added

### 3. Filing Instructions:

<b>Remove pages:</b>	<b>Insert Pages:</b>
TOC-1 thru TOC-4	TOC-1 thru TOC-4
801-1 thru 801-32	801-1 thru 801-32
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826 N/A	826-1 thru 826-4
836-1 thru 836-8	836-1 thru 836-8
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- 801.695-3 Authority of the HCA.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; 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	852.228-71	2900-0590
809.504(d)	2900-0418	852.232-70 - 852.232-71	2900-0422
813	2900-0393	852.236-72	2900-0422
832.202-4	2900-0688	852.236-79	2900-0208
836.606-71	2900-0208	852.236-80 (Alt. I)	2900-0422
852.207-70	2900-0590	852.237-7	2900-0590
852.209-70	2900-0418	852.243-70	2900-0422
852.211-70	2900-0587	852.270-3	2900-0589
852.211-72	2900-0586		

### **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

**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.]

[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018 revises 801.602-71 action (b) to allow contracting office/peer review of acquisition plans up to \$7 million. Actions (i) and (k) are added to Table 801.602-71 to reflect new HCA delegations and redelegations. 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)	<ul style="list-style-type: none"> <li>- ≤ \$7M: CO/Peer Review</li> <li>- \$7M-\$50M: One level above the CO</li> <li>- &gt;\$50M: HCA or Designee</li> </ul>
(b) Acquisition Plans	<ul style="list-style-type: none"> <li>- ≤ \$7M: CO/Peer Review</li> <li>- \$7M-\$100M: One level above the CO</li> <li>- &gt;\$100M: HCA or Designee</li> </ul>
(c) Stop Work Orders – (Terminations)	<ul style="list-style-type: none"> <li>- One Level above the CO for all Stop Work Orders</li> <li>- OGC Review</li> </ul>



(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 Purchase Financing, Policy (VAAR 832.202-1)	-HCA must approve, before award, contracts that include unusual contract financing
(j) Commercial Interim or Advance Payment Terms (VAAR 832.402)	-HCA or Designee for any use of Commercial Interim or Advance Payment Terms
(k) Unusual Progress Payments (VAAR 832.501-2)	-HCA or Designee must approve contractor's request

[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:

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(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.

<b>Table 801.602-75</b>	
<b>Type of contract actions</b>	<b>Anticipated Contract Award Value</b>
(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

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(g) Supply or service solicitations, contracts, task orders, and modifications (change orders)	\$7,000,000 or greater
(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:

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- (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

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(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 (<http://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.

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(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.]

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(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

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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](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](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.

[Class Deviation from VA Acquisition Regulation 801.690-3, 801.690-4, 801.690-6 and 801.690-7, dated July 12, 2019, authorizes and identifies the Senior Procurement Executive (SPE) as the individual with the grant and terminate warrant authority. The deviation also further delegates the SPE's authority to the HCAs and others as deemed appropriate. The deviation expires once incorporated into the Veterans Affairs Acquisition Regulation (VAAR) or the Veterans Affairs Acquisition Manual (VAAM) or otherwise rescinded]

**801.690-3 [Reserved]****801.690-4 [Reserved]****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

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(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

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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 and termination.**

The Senior Procurement Executive is granted the authority to appoint and terminate Contracting Officers. The authority is further delegated to the Heads of the Contracting Activities (HCA) and others as appropriate. All delegations of authority will be made in writing.

**801.690-7 [Reserved]****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,

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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).

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

**PART 823— ENVIRONMENT, ENERGY AND WATER EFFICIENCY,  
RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND  
DRUG-FREE WORKPLACE**

*(Added 9/30/2019)*

**Subpart 823.1—Sustainable Acquisition Policy**

**Sec.**

823.103-70	Policy.
823.103-71	Solicitation provision.

**Subpart 823.3—Hazardous Material Identification and Material Safety Data**

823.300	Scope of subpart.
823.303-70	Contract clause.

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

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## **SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

### **PART 823—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace**

#### **Subpart 823.1—Sustainable Acquisition Policy**

##### **823.103-70 Policy.**

(a) For new contracts and orders above the micro-purchase threshold, contracting officers may insert a solicitation provision to include an evaluation factor for an offeror's Sustainable Acquisition Plan.

(b) When a solicitation includes the provision at 852.223-70, Instruction to Offerors—Sustainable Acquisition Plan, offerors shall include a Sustainable Acquisition Plan in their technical proposal addressing the sustainable products and services for delivery under any resulting contract.

##### **823.103-71 Solicitation provision.**

The contracting officer shall insert the provision at 852.823-70, Instruction to Offerors—Sustainable Acquisition Plan, in solicitations above the micro-purchase threshold.

#### **Subpart 823.3—Hazardous Material Identification and Material Safety Data**

##### **823.300 Scope of subpart.**

This subpart provides a contract clause for use in administering safety and health requirements.

##### **823.303-70 Contract clause.**

The contracting officers shall insert clause 852.823-71, Safety and Health, in solicitations and contracts that involve hazardous materials or hazardous operations for the following types of requirements:

- (1) Research, development, or test projects.
- (2) Transportation of hazardous materials.
- (3) Construction.

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**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

**PART 824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

*(Revised 9/30/2019)*

**Subpart 824.1 – Protection of Individual Privacy**

**Sec.**

824.102	General.
824.103	Procedures.

**Subpart 824.2 – Freedom of Information Act**

824.203	Policy.
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AUTHORITY: 5 U.S.C. 552(a); 40 U.S.C. 121(c), 41 U.S.C. 1121(c); 41 U.S.C. 1702; 38 CFR 1.550–1.562 and 1.575–1.584; and 48 CFR 1.301–1.304.

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## **SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

### **PART 824— PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

#### **Subpart 824.1—Protection of Individual Privacy**

##### **824.102 General.**

VA rules implementing the Privacy Act of 1974 are in 38 CFR 1.575 through 1.584, Safeguarding Personal Information in Department of Veterans Affairs Records.

##### **824.103 Procedures.**

(c) The contracting officer shall reference the following documents in solicitations and contracts that require the design, development, or operation of a system of records—

(1) VA Handbook 6500.6, Contract Security;

(2) VA Handbook 6508.1, Procedures for Privacy Threshold Analysis and Privacy Impact Assessment;

(3) VA Handbook 6510, VA Identity and Access Management—

(i) The contracting officer will ensure that statements of work or performance work statements that require the design, development, or operation of a system of records include procedures to follow in the event of a Personally Identifiable Information (PII) breach; and

(ii) The contracting officer shall ensure that Government surveillance plans for contracts that require the design, development, or operation of a system of records include monitoring of the contractor's adherence to Privacy Act/PII regulations. The assessing official should document contractor-caused breaches or other incidents related to PII in past performance reports. Such incidents include instances in which the contractor did not adhere to Privacy Act/PII contractual requirements.

#### **Subpart 824.2—Freedom of Information Act**

##### **824.203 Policy.**

(a) VA rules implementing the Freedom of Information Act are in 38 CFR 1.550 through 1.562.

(b) Upon receipt of a request, the contracting officer shall provide the requester with the name of the cognizant VA FOIA Service Office. The VA FOIA Service Office (see <http://www.oprm.va.gov/foia/>) is the focal point for all FOIA requests and official information may only be released through the cognizant FOIA Service or their authorized designee.

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

**PART 826—OTHER SOCIOECONOMIC PROGRAMS**

*(Added 9/30/2019)*

**Subpart 826.2—Disaster or Emergency Assistance Activities**

Sec.

826.202-1                      Local area set-aside.

826.202-2                      Evaluation preference.

Authority: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; 38 CFR 1.550-1.562 and 1.575-1.584; and 48 CFR 1.301-1.304.

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## **SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

### **PART 826—OTHER SOCIOECONOMIC PROGRAMS**

#### **Subpart 826.2—Disaster or Emergency Assistance Activities**

##### **826.202-1 Local area set-aside.**

(c) The contracting officer shall determine whether a local area set-aside should be further restricted to verified Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs) pursuant to subpart 819.70.

##### **826.202-2 Evaluation preference.**

Pursuant to 38 U.S.C. 8128, the contracting officer shall include evaluation factors in accordance with 815.304 and the evaluation criteria clause prescribed at 815.304-71(a), 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

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**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**

**PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

*(Revised 9/30/2019)*

**Subpart 836.2—Special Aspects of Contracting for Construction**

**Sec.**

836.202	Specifications.
836.202-70.1	Specifications—use of equal products.
836.203	Government estimate of construction costs.
836.203-70.1	Protection of the independent government estimate—sealed bid.
836.204	Disclosure of the magnitude of construction projects.

**Subpart 836.5—Contract Clauses**

836.500	Scope of subpart.
836.501	Performance of work by the contractor.
836.521	Specifications and drawings for construction.
836.573	Contractor production report.
836.574	Subcontracts and work coordination.
836.580	Notice to bidders—additive or deductive bid line items.

**Subpart 836.6—Architect-Engineer Services**

836.603	Collecting data on and appraising firms' qualifications.
836.606	Negotiations.
836.606-70	Architect-engineer firms' proposal.
836.606-71	Application of 6 percent architect-engineer fee limitation.

**Subpart 836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements**

836.7000	Scope of subpart.
836.7001	Unique construction and architect-engineer services forms.

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

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**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING****PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS****Subpart 836.2—Special Aspects of Contracting for Construction****836.202 Specifications.****836.202-70 Specifications—use of equal products.**

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

**836.203 Government estimate of construction costs.****836.203-70 Protection of the independent government estimate—sealed bid.**

For sealed bid acquisitions the contracting officer or bid custodian is not authorized to release the basis for calculating the estimate at any time. The person preparing the independent government estimate (IGE) shall—

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

**836.204 Disclosure of the magnitude of construction projects.**

The contracting officer shall utilize the estimated price ranges defined in FAR [36.204](#) (a) through (e) as further supplemented below when identifying the magnitude of a VA project in advance notices and solicitations:

- (f) For estimated price ranges between \$1,000,000 and \$5,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of the

Part 836—Construction and Architect-Engineer Contracts

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following price ranges:

- (1) Between \$1,000,000 and \$2,000,000.
- (2) Between \$2,000,000 and \$5,000,000.
- (g) Between \$5,000,000 and \$10,000,000.
- (h) For estimated price ranges greater than \$10,000,000, the contracting officer shall identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:
  - (1) Between \$10,000,000 and \$20,000,000.
  - (2) Between \$20,000,000 and \$50,000,000.
  - (3) Between \$50,000,000 and \$100,000,000.
  - (4) Between \$100,000,000 and \$150,000,000.
  - (5) Between \$150,000,000 and \$200,000,000.
  - (6) Between \$200,000,000 and \$250,000,000.
  - (7) More than \$250,000,000.

### **Subpart 836.5—Contract Clauses**

#### **836.500 Scope of subpart.**

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

#### **836.501 Performance of work by the contractor.**

The contracting officer shall insert the clause at 852.236-72, Performance of Work by the Contractor, in solicitations and contracts for construction that contain the FAR clause at [52.236-1](#), Performance of Work by the Contractor, except those awarded pursuant to subpart 819.70. When the solicitations or contracts include a section entitled “Network Analysis System (NAS),” the contracting officer shall use the clause with its Alternate I.

#### **836.521 Specifications and drawings for construction.**

The contracting officer shall insert the clause at 852.236-71, Specifications and Drawings for Construction, in solicitations and contracts for construction that include the FAR clause at [52.236-21](#), Specifications and Drawings for Construction.

**836.573 Contractor production report.**

The contracting officer shall insert the clause at 852.236-79, Contractor Production Report, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

**836.574 Subcontracts and work coordination.**

The contracting officer shall insert the clause at 852.236-80, Subcontracts and Work Coordination, in invitations for bids and contracts for construction expected to exceed the micro-purchase threshold for construction. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

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

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

**Subpart 836.6—Architect-Engineer Services****836.603 Collecting data on and appraising firms' qualifications.**

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

**836.606 Negotiations.****836.606-70 Architect-engineer firms' proposal.**

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

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

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

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

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

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

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

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

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

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

(c) The 6 percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to—

(i) Determination of program requirements, including schematic or preliminary plans and estimates;

(ii) Determination of feasibility of proposed project;

(iii) Preparation of measured drawings of existing facility;

(iv) Subsurface investigation;

(v) Structural, electrical, and mechanical investigation of existing facility;

(vi) Surveys: topographic, boundary, utilities, etc.;

(vii) Environmental services;

(viii) Geo-Tech studies; and

(ix) Feasibility studies.



(2) Special consultant services that are not normally available in organizations of architects or engineers and that are not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other—

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media;

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications;

(iii) Supervision or inspection of construction, review of shop drawings or samples, and other services performed during the construction phase;

(iv) All other services that are not an integral part of the production and delivery of plans, designs, and specifications; and

(v) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

### **Subpart 836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements**

#### **836.7000 Scope of subpart.**

This subpart sets forth requirements for the use of VA unique forms, as prescribed in this part, for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. See part 853.

#### **836.7001 Unique construction and architect-engineer services forms.**

Contracting officers may use the following forms, as prescribed in this subpart, for construction, architect-engineer services or dismantling, demolition, or removal of improvements contracts as set forth below and in the referenced prescriptions:

(a) VA Form 6298, Architect-Engineer Fee Proposal (see 853.236-70). VA Form 6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606-70.

(b) VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services) (see 853.236-71). VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services), may be used for ordering supplies or services, including task orders for Construction or A-E services, to include dismantling, demolition, or removal of improvements.

(c) VA Form 10101, Contractor Production Report (see 853.236-72). Contractors may use VA Form 10101, Contractor Production Report or a contractor generated form containing the same type of information contained in the form, as required by 836.573 which prescribes the clause at 852.236-79, Contractor Production Report.

**SUBCHAPTER G—CONTRACT MANAGEMENT**

**PART 843—CONTRACT MODIFICATIONS**

*(Added 9/30/2019)*

**Subpart 843.2—Change Orders**

Sec.

843.205

Contract clauses.

843.205-70

Contract changes—supplement.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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**SUBCHAPTER G—CONTRACT MANAGEMENT****PART 843—CONTRACT MODIFICATIONS****Subpart 843.2—Change Orders****843.205 Contract clauses**

As authorized in the introductory text of clauses [FAR 52.243-1](#), Changes—Fixed-Price; [FAR 52.243-2](#), Changes—Cost-Reimbursement; and [FAR 52.243-4](#), Changes, and in the prescription at FAR 43.205(c) for [FAR 52.243-3](#), Changes—Time-and-Materials or Labor-Hours, the contracting officer may vary the period within which a contractor must assert its right to an equitable adjustment but the extended period shall not exceed 60 calendar days.

**843.205-70 Contract changes—supplement.**

The contracting officer shall insert the clause at 852.243-70, Construction Contract Changes—Supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

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**SUBCHAPTER H—CLAUSES AND FORMS****PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES***(Revised 9/30/2019)***Subpart 852.1—Instructions for Using Provisions and Clauses****Sec.**

- 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 [Reserved]  
 852.207-70 Report of employment under commercial activities.  
 852.209-70 Organizational conflicts of interest.  
 852.211-70 Equipment Operation and Maintenance Manuals.  
 852.211-71 [Reserved]  
 852.211-72 Technical Industry Standards.  
 852.211-73 [Reserved]  
 852.211-74 [Reserved]  
 852.211-75 [Reserved]  
 852.214-70 [Reserved]  
 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.  
 852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small  
 Business Evaluation Factors.  
 852.215-71 Evaluation Factor Commitments.  
 852.216-70 [Reserved]  
 852.216-71 Economic Price Adjustment of Contract Price(s) Based on a Price  
 Index.  
 852.216-72 Proportional Economic Price Adjustment of Contract Price(s) Based  
 on a Price Index.  
 852.216-73 Economic Price Adjustment—State Nursing Home Care for  
 Veterans.  
 852.216-74 Economic Price Adjustment—Medicaid Labor Rates.  
 852.216-75 Economic Price Adjustment Clause—Fuel Surcharge.  
 852.217-70 Contract Action Definitization  
 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)

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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.
852.219-74	Limitations on Subcontracting—Monitoring and Compliance.
852.219-75	Subcontracting Commitments Monitoring and Compliance.
852.219-76	Subcontracting Plans Monitoring and Compliance.
852.222-70	Contract Work Hours and Safety Standards—Nursing Home Care for Veterans.
852.223-70	Instructions to Offerors—Sustainable Acquisition Plan.
852.223-71	Safety and Health.
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.
852.228-73	Indemnification of Contractor—Hazardous Research Projects.
852.229-70	[Reserved]
852.229-71	[Reserved]
852.232-70	Payments Under Fixed-Price Construction Contracts (Without NAS-CPM).
852.232-71	Payments Under Fixed-Price Construction Contracts (Including NAS-CPM)
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	[Reserved]
852.236-75	[Reserved]
852.236-76	[Reserved]
852.236-77	[Reserved]
852.236-78	[Reserved]
852.236-79	Contractor Production Report.
852.236-80	Subcontracts and Work Coordination.
852.236-81	[Reserved]
852.236-82	[Reserved]
852.236-83	[Reserved]
852.236-84	[Reserved]
852.236-85	[Reserved]
852.236-86	[Reserved]
852.236-87	[Reserved]
852.236-88	[Reserved]
852.236-89	[Reserved]



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852.236-90	Restriction on Submission and Use of Equal Products.
852.236-91	[Reserved]
852.236-92	Notice to Bidders—Additive or Deductive Bid Line Items.
852.237-7	Indemnification and medical liability insurance.
852.237-70	Contractor responsibilities.
852.242-70	Government Construction Contract Administration.
852.243-70	Construction Contract Changes—Supplement.
852.246-70	[Reserved]
852.246-71	Rejected Goods.
852.246-72	Frozen Processed Foods.
852.246-73	Noncompliance with Packaging, Packing and/or Marking Requirements.
852.246-74	[Reserved]
852.246-75	Warranty of Construction—Guarantee Period Services.
852.246-76	Purchase of Shellfish.
852.247-70	Determining Transportation Costs for Evaluation of Offers.
852.247-71	Delivery Location.
852.247-72	Marking Deliverables.
852.247-73	Packing for Domestic Shipment.
852.247-74	Advance Notice of Shipment.
852.247-75	Bills of Lading.
852.252-70	Solicitation provisions or clauses incorporated by reference.
852.270-1	Representatives of contracting officers.
852.270-2	[Reserved]
852.270-3	[Reserved]
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. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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**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—Text of Provisions and Clauses**

*(Revised 4/18/2019)*

#### **852.203-70 Commercial Advertising.**

As prescribed in 803.570-2, insert the following clause:

##### **COMMERCIAL ADVERTISING (May 2018)**

The Contractor shall not make reference in its commercial advertising to Department of Veterans Affairs contracts in a manner that states or implies the Department of Veterans Affairs approves or endorses the Contractor's products or services or considers the Contractor's products or services superior to other products or services.

(End of clause)

#### **852.203-71 [RESERVED]**

#### **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 Equipment Operation and Maintenance Manuals.**

As prescribed in 811.107-70, insert the following clause:

##### **EQUIPMENT OPERATION AND MAINTENANCE MANUALS (NOV 2018)**

The Contractor shall follow standard commercial practices to furnish manual(s), handbook(s) or brochure(s) containing operation, installation, and maintenance instructions, including pictures or illustrations, schematics, and complete repair/test guides, as necessary, for technical medical equipment and devices, and/or other technical and mechanical equipment provided per CLIN(s) # \_\_\_\_ [*Contracting Officer insert CLIN information*]. The manuals, handbooks or brochures shall be provided in hard copy, soft copy or with electronic access instructions, consistent with standard industry practices for the equipment or device. Where applicable, the manuals, handbooks or brochures will include electrical data and connection diagrams for all utilities. The documentation shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of clause)

#### **852.211-71 [RESERVED]**

#### **852.211-72 Technical Industry Standards.**

As prescribed in 811.204-70, insert the following clause:

##### **TECHNICAL INDUSTRY STANDARDS (NOV 2018)**

(a) The Contractor shall conform to the standards established by: \_\_\_\_\_ [*Contracting Officer: Insert name of organization establishing the requirement, reference title, cite and date, e.g., United States Department of Agriculture (USDA), Institutional Meat Purchase Specifications (IMPS), Series 100, Beef products, Jan 2010*] as to [*Contracting Officer: Insert item and CLIN, e.g. CLIN 0005 Ground Beef*].

(b) The Contractor shall submit proof of conformance to the standard. This proof may be a label or seal affixed to the equipment or supplies, warranting that the



item(s) have been tested in accordance with the standards and meet the contract requirement. Proof may also be furnished by the organization listed above certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(c) Offerors may obtain the standards cited in this provision by submitting a request, including the solicitation number, title and number of the publication to:

[Organization] \_\_\_\_\_ [Mail or email address] \_\_\_\_\_.

(d) The offeror shall contact the Contracting Officer if response is not received within two weeks of the request.

(End of clause)

**852.211-73 [RESERVED]**

**852.211-74 [RESERVED]**

**852.211-75 [RESERVED]**

**852.214-70 [RESERVED]**

**852.214-71 Restrictions on Alternate Item(s).**

As prescribed in 814.201-6(a)(1), insert the following provision:

**RESTRICTIONS ON ALTERNATE ITEM(S) (MAY 2018)**

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(a)(2), insert the following provision:

**ALTERNATE ITEM(S) (MAY 2018)**

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(a)(3), insert the following provision:

**ALTERNATE PACKAGING AND PACKING (MAY 2018)**

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 Marking of Bid Samples.**

As prescribed in 814.201-6(b), insert the following provision:

**MARKING OF BID SAMPLES (MAY 2018)**

Any bid sample(s) furnished must be in the quantities specified in the solicitation. Cases or packages must be plainly marked "Bid Sample(s)" 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).

(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)

**852.216-70 [Reserved]****852.216-71 Economic Price Adjustment of Contract Price(s) Based on a Price Index.**

As prescribed in 816.203-4(e)(1), insert the following clause:

**ECONOMIC PRICE ADJUSTMENT OF CONTRACT PRICE(S)  
BASED ON A PRICE INDEX (MAR 2018)**

(a) To the extent that contract cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this contract for the base period and any option periods do not include any amount to protect against such contingent cost increases.

(b) The Base and Adjusting Indexes, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_,<sup>1</sup> as contained in \_\_\_\_\_,<sup>2</sup> as published by \_\_\_\_\_.<sup>3</sup> All adjustments authorized under this clause shall be made by using the Base Index and Adjusting Indexes, which are published \_\_\_\_\_.<sup>4</sup>

(1) The Base Index, for the purposes of price adjustment under this clause, shall be the most recent Index published prior to the date for receipt of offers, or the due date for receipt of best and final offers if discussions were held whichever is later. The Base Index shall remain constant for the entire term of the contract, including all option periods.

(2) The Adjusting Index shall be the most recent Index published prior to the date of contract adjustment, as specified in paragraph (d) of this clause.

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**Notes:**

<sup>1</sup> The contracting officer shall conduct market research to determine a suitable Consumer Price Index or other independent broad-based index to use for the solicitation. For example, for medical services, an appropriate index may be the Consumer Price Index that tracks medical services.

<sup>2</sup> Specify where the Index can be found, such as in a solicitation for laboratory services, the Contracting Officer might enter "Table 1, CPI-U: U.S. City Average, by expenditure category and commodity and service group, found at <http://www.bls.gov/news.release/cpi.t01.htm>".

<sup>3</sup> Provide the information on who publishes the applicable Index used e.g., in the example for laboratory services, "the U.S. Department of Labor".

<sup>4</sup> State how often the Index is published, such as "monthly, around the middle of the month". Note that some Consumer Price Indexes are not published monthly. Ensure that the correct information is provided for the specific Index used.

(c) The percentage difference between the Base Index and the Adjusting Index, rounded to the nearest .01 percent (e.g., 4.57%), will be used in calculating all adjustments to the following line items: \_\_\_\_\_.<sup>5</sup> The prices for these line items will be multiplied by the percentage increase or decrease and the resulting amount will be added to or deducted from the original line item price for that contract period (e.g., Base Year) to arrive at the new contract price for those line items from the effective date of the adjustment to the beginning of the next contract adjustment period, rounded to the same number of decimal points as the prices originally bid. Calculations for option year contract terms will be based on the prices in the schedule for those option years.

(d) The dates of contract adjustment shall be \_\_\_\_\_<sup>6</sup> and the starting dates of each option year, if not already included in these dates. The Contracting Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified in this paragraph (d), shall obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting the unit or contract prices, as specified in paragraph (c). The adjusted unit or contract prices shall be effective for all orders placed or services provided after the date of contract adjustment as specified in this paragraph (d) until the beginning of the next contract adjustment period. If the Contracting Officer fails to act, the Contractor shall request in writing a contract adjustment and any subsequent adjustment shall be retroactive to the applicable date of contract adjustment specified in this paragraph (d). The Contractor's entitlement to price

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<sup>5</sup> Enter the line items that will be subject to adjustment or revise this paragraph to otherwise state what prices are subject to adjustment under this clause.

<sup>6</sup> Establish time periods for when the Contracting Officer will process adjustments. This could be "the first day of every quarter, January, April, July, and October" or "Annually on October 1<sup>st</sup>". or some other similar time periods. Since the Contracting Officer is responsible for initiating the change, the Contracting Officer must establish a reminder mechanism to ensure that the adjustments are accomplished within the time period specified.

increases for a prior contract period (base year or option year) is waived unless the Contractor's written request for an adjustment under this clause is received by the Contracting Officer no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year. The Government's right to contract decreases for prior contract periods (base year or option year) is waived unless the Contracting Officer processes a contract modification no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year.

(e) An example of an adjustment calculation is provided herein for informational purposes only.

(1) The original contract price or line item prices for that contract term (e.g., base year) shall be used for all calculations during that particular contract term and new calculations shall be made for each and every contract adjustment period specified in paragraph (d) during that contract term.

(2) For purposes of this example, the contract prices for the line items as specified in paragraph (c) will be adjusted by the percentage calculated as follows:

Adjusting Index for the current period	196.6
Minus the Base Index	-188.0
Equals the Index Point Change	8.6
Index Point Change Divided by the Base Index	$8.6 / 188.0 = .0457^*$
Result Multiplied by 100 Equals the Percentage Change (The Index Point Change Percentage)	4.57%

\*This figure shall be rounded to the fourth decimal place. When the fifth decimal is 1 to 4, the figure shall be rounded down, 5 to 9, rounded up.

(3) For a line item with an original bid price of \$25.00 and a 4.57 percent Index Point Change increase as of the first contract adjustment period, as shown above, the calculations for a new contract price for the first contract adjustment period would be as follows:  $\$25.00 \times .0457 = \$1.14$ ,  $\$25 + \$1.14 = \$26.14^{**}$ . The new contract price for this line item from the beginning of that first contract adjustment period until the start of the next contract adjustment

period would be \$26.14 and the contracting officer would issue a contract modification reflecting this price change.

\*\*The unit price adjustment shall be rounded up or down, as in paragraph (e)(1) above, to match the number of decimal places in the original bid.

(4) If the Adjusting Index went down for the second adjustment period, reflecting only a 3 percent Index Point Change increase over the Base Index, the new price for this sample line item would be reduced for the second contract adjustment period from \$26.14 to \$25.75 as follows:  $\$25 \times .03 = \$0.75$ ,  $\$25 + \$0.75 = \$25.75$ . Note that the calculations for the second contract adjustment period are based on the original contract price for that contract term of \$25.00. The contract price for this line item is modified to reflect this new price for the second contract adjustment period.

(5) At the start of the first option year and each subsequent option year period (as well as for each contract adjustment period specified in paragraph (d) during that option year, if different), the Contracting Officer shall recalculate the contract or unit prices for that first option year based on any changes between the Adjusting Index and the Base Index, from the original contract award date to the start of the first option period, and based on the Contractor's new option year prices. Assume the Contractor's bid price for the first option year for the above sample line item was \$25.50 and the calculations shown in paragraph (e)(1) of this clause at the start of the first option period reflected a 6 percent Index Point Change. The new contract price for this sample line item at the start of the first option period would be calculated as follows:  $\$25.50 \times .06 = \$1.53$ ,  $\$25.50 + \$1.53 = \$27.03$ . The Contracting Officer would process a contract modification reflecting a revised contract price of \$27.03 for the first contract adjustment period in the first option year.

(f) Price adjustments pursuant to this clause, shall be documented by a contract modification issued by the Contracting Officer, show the Base Index (see paragraph (b)(1)), the Adjusting Index, the adjusted contract prices (see paragraph (c)), the mathematical calculations used to arrive at the adjusted contract prices, and the effective date of the adjustment (see paragraph (d)).

(g) At the start of each option year, the Contracting Officer shall, within 5 days of the start of the option year period, process a contract modification adjusting the option year prices by the then current Index Point Change percentage, if any, reflecting the new adjusted prices for that first contract adjustment period in that option year.

(h) In the event that \_\_\_\_\_<sup>7</sup> discontinues, or alters substantially, its method of calculating the Index cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines that the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify the use of an appropriate substitute index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

(i) Any dispute arising under this clause shall be resolved subject to the "Disputes" clause of the contract.

(End of clause)

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Notes:

<sup>7</sup> Enter in the name of the entity whose index is used in the clause. In most cases when using this clause format, the index used would be a CPI-U Index and the Contracting Officer would enter "the U.S. Department of Labor".



**852.216-72 Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.**

As prescribed in 816.203-4(e)(2), insert the following clause:

**PROPORTIONAL ECONOMIC PRICE ADJUSTMENT OF CONTRACT PRICE(S)  
BASED ON A PRICE INDEX (MAR 2018)**

(a) To the extent that contract cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this contract for any option periods do not include any amount to protect against such contingent cost increases.

(b) The cost index, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_<sup>8</sup> as contained in \_\_\_\_\_<sup>9</sup> as published by \_\_\_\_\_<sup>10</sup>. All adjustments authorized under this clause shall be made by \_\_\_\_\_<sup>11</sup> using the Base Index and Adjusting Indexes, which are published \_\_\_\_\_.

(1) The Base Index, for the purposes of price adjustment under this clause, shall be the most recent Index published prior to the closing date for receipt of offers, or the due date for receipt of best and final offers if discussions are held. This Base Index shall remain constant throughout the life of the contract, including all options.

(2) The Adjusting Index shall be the most recent Index published prior to the date of contract adjustment, as specified in paragraph (f)

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**Notes:**

<sup>8</sup> The Contracting Officer shall conduct market research to determine a suitable cost index for use in the solicitation. The index used is directly related to the type of commodity or service most likely to impact the Contractor and must approximately track the economic changes affecting the Contractor's costs. For transportation services, an appropriate index might be one that tracks the price of gasoline or diesel fuel. For example, in a solicitation for ambulance services, the Contracting Officer might enter into this block "the "Weekly U.S. Retail Gasoline Prices, Regular Grade" Index for New England" (or California or whichever index is the most appropriate).

<sup>9</sup> Specify where the index can be found, such as in an example for gasoline, "the Energy Information Administration Web site (see VAAM M816.203-70).

<sup>10</sup> Provide the information on who publishes the index, such as, in an example for gasoline, "the U.S. Department of Energy."

<sup>11</sup> State how often the index used is published, such as, in an example for an index for gasoline, "weekly each Monday at 5:00 p.m. (Eastern time)," or "Tuesday if Monday is a holiday."

(c) For purposes of this clause, it will be conclusively presumed that \_\_\_\_\_ percent (%)<sup>12</sup> of the price of \_\_\_\_\_<sup>13</sup> represents the Base Cost of \_\_\_\_\_<sup>14</sup> and the resulting Base Cost will be the basis upon which adjustment will be made under this clause. This Base Cost will be used in calculating all adjustments to the following line items: \_\_\_\_\_.<sup>15</sup> A new Base Cost will be calculated for each option year period based on the new option year prices.

(d) The percentage of the price of the indexed commodity (see paragraph (c)) remains fixed throughout the life of the contract and is not subject to modification under this clause. Any pricing actions pursuant to the "Changes" clause or other clause or provision of the contract, except for this clause, will be priced as though there were no provisions for economic price adjustment.

(e) All price adjustments shall be applicable only to the specific contract adjustment period to which the calculations are made. For every contract adjustment period, new calculations shall be made and new prices determined. Every adjustment during the Base Year shall be based on the original contract prices for that contract year and every adjustment during an option year shall be based on the original contract prices for that option year. The Contracting Officer must make new calculations for each and every contract adjustment period specified in paragraph (f) and at the beginning of each new option year, if different.

(f) The dates of contract adjustment shall be \_\_\_\_\_<sup>16</sup> and the starting dates of each option year, if not already included in these dates. The Contracting

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Notes:

<sup>12</sup> Prior to issuing the solicitation, the Contracting Officer must conduct market research to determine an appropriate percentage to include in this paragraph. The percentage should reflect that portion of the unit price for the services or supplies being acquired that is applicable to the indexed commodity. For instance, in the case of an ambulance contract, research might indicate that, at the time the solicitation is being drafted and based on prior per-mile bid prices, the cost of gasoline accounts for 10% of the per mile cost of operating an ambulance. For example, if the prior bid price had been \$1.60 per mile, ambulances average 10 miles per gallon, and the cost of gasoline had been \$1.559 per gallon, 1 mile's worth of gasoline (\$.16) would be approximately ten (10) percent of the prior per mile bid price of \$1.60 per mile. This percent must be stated in the solicitation so that the same figure applies to all bidders. This figure remains constant throughout the life of the contract.

<sup>13</sup> Enter in this block the portion of the contract that will be subject to price adjustment, e.g., "each one-way mile of ambulance services," or the line items that will be subject to price adjustment.

<sup>14</sup> Enter in this block the commodity applicable to the index being used, as in an example for an ambulance contract, "regular grade gasoline".

<sup>15</sup> Enter the line items that will be subject to adjustment, as in an example for an ambulance contract, the line items that reflect the one-way cost per mile for ambulance services for the base year and for each option year.

<sup>16</sup> Establish time periods for when the Contracting Officer will process adjustments. This could be "the January 2008 Edition

Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified herein, obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting the contract or unit price(s). The adjusted contract or unit price(s) shall be effective for all orders placed or services provided after the date of contract adjustment, as specified in this paragraph (f), until the date of the next contract adjustment. If the Contracting Officer fails to act, the Contractor shall request a contract adjustment in writing and any subsequent adjustment shall be retroactive to the applicable date of contract adjustment. The Contractor's entitlement to price increases for a prior contract period (base year or option year) shall be waived unless the Contractor's written request for an adjustment under this clause is received by the Contracting Officer no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year. The Government's right to contract decreases for prior contract periods (base year or option year) shall be waived unless the Contracting Officer processes a contract modification no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year.

(g) An example of an adjustment calculation is provided herein for informational purposes only.

(1) For purposes of this example, assume that a contract is for ambulance services, that the contract price is \$2.10 per mile one way, that price adjustments will be made on the basis of the cost of gasoline, that the cost of gasoline represents 10% of the total cost per mile (the Base Cost is 10% of \$2.10 (the per mile one way price in Line Item X), or \$0.21), and that contract adjustments will be made quarterly. If the Base Index (the price of gasoline the week prior to receipt of bids) is \$1.559 per gallon and the price of gasoline at the first date of contract adjustment is \$2.129 per gallon, the calculations for contract price adjustment would be as follows:

Adjusting Index (most recent Index cost of gasoline as of the date of the first adjustment period)	\$2.129 per gallon
Minus the Base Index (Index cost of gasoline as of the date of receipt of offers)	-\$1.559 per gallon

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first day of each month" or "the first day of every quarter, January, April, July, and October" or "annually on October 1st" or some other similar time periods. Since the Contracting Officer is responsible for initiating the change, the Contracting Officer must establish a reminder mechanism to ensure that the adjustments are accomplished on time.

Equals increase (or decrease) to the Base Index	\$0.570
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Divide increase (or decrease) to the Base Index by the Base Index	$\$0.570 \div \$1.559 = .3656^*$ (36.56% increase)
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Base Cost of \$0.21 (10% of \$2.10) multiplied by .3656 = \$0.0768 unit price increase.

New Unit price following the adjustment is \$2.10 plus \$0.0768 = \$2.1768 per mile (rounded to \$2.18)\*\*

\*This figure shall be rounded to the fourth decimal place. When the fifth decimal is 1 to 4, the figure shall be rounded down, 5 to 9, rounded up.

\*\*The unit price adjustment shall be rounded up or down, as above, to match the number of decimal places in the original bid.

(2) For the second contract adjustment period, all calculations would be based on the original contract bid price for that contract year, \$2.10 per mile in this example. If the price of gasoline goes down during the second adjustment period to the original Base Index price of \$1.559 per gallon, the adjusted contract price for that second period would return to \$2.10 per mile (there would be a zero percent increase or decrease to the Base Cost and thus no change to the original bid price for that contract adjustment period). The Contracting Officer would then issue a contract modification returning the contract price from \$2.18 to \$2.10 per mile for that contract adjustment period. If, on the other hand, the price of gasoline actually went below the Base Index price, say to \$1.449 per gallon, the calculations for the second economic price adjustment period would be as follows:

Adjusting Index (most recent Index cost of gasoline as of the date of the second adjustment period)	\$1.449 per gallon
Minus the Base Index (Index cost of gasoline as of the date of receipt of offers)	-\$1.559 per gallon
Equals increase (or decrease) to Base Index	(\$0.110) (a negative \$.11)
Divide increase (or decrease) to the Base Index by the Base Index	(\$0.11) $\div$ \$1.559 = (.0706)

(7.06% decrease)

Base Cost of \$0.21 (10% of \$2.10) multiplied by (.0706) = (\$0.0148) unit price decrease.

New Unit price following the second economic price adjustment is \$2.10 minus \$0.0148 = \$2.0852 per mile (rounded to \$2.09).

(3) At the start of the first option year, the Contracting Officer shall recalculate the price per mile based on any changes in the price of gasoline from the original contract award date and based on the Contractor's new first option year price per mile. Assuming the Contractor's bid price per mile for the first option year was \$2.25 per mile, the new Base Cost for gasoline would be 10% of \$2.25, or \$0.225 (note that the original percent figure from paragraph (c) (10% in this sample) stays constant throughout the life of the contract), but the Base Cost would change if the option year contract price changes. If the Adjusting Index for gasoline at the start of the first option year was now up to \$1.899 per gallon, the new first option year price for the first contract adjustment period would be calculated as follows:

Adjusting Index (most recent Index cost of gasoline as of the first day of the first option period)	\$1.899 per gallon
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Minus the Base Index (Index cost of gasoline as of the date of receipt of offers)	\$1.559 per gallon
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Equals increase (or decrease) to the Base Index	\$0.340
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Divide the increase (or decrease) to the Base Index by the Base Index	$\$0.34 + \$1.559 = .2181$ (21.81% increase)
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Base Cost of \$0.225 (10%\* of \$2.25) multiplied by .2181 = \$0.0491 unit price increase.

New Unit price for the first contract adjustment period in the first option year is \$2.25 plus \$0.0491 = \$2.2991 per mile (rounded to \$2.30 per mile).

\*Note that the percentage remains constant (10%) but that the Base Cost has been increased for the first contract adjustment period in the first option year, since the Base Cost is a percentage of the first option year unit cost per mile (in this sample), and the unit cost per mile has increased in this sample for the first option year from \$2.10 to \$2.25.

Although the new unit price for the first contract adjustment period of the first option year following application of the economic price adjustment in this sample would be \$2.30 per mile, all economic price adjustment calculations made during that first option year would be based on the original first option year bid price (\$2.25 in this sample). If in the second contract adjustment period of the first option year, the calculations resulted in a unit price increase for gasoline of \$0.0332, the adjusted price for that period would be  $\$2.25 + \$0.0332 = \$2.2832$ , rounded to \$2.28 per mile.

(h) Price adjustments pursuant to this clause, which shall be made by contract modification issued by the Contracting Officer, shall show the Base Index (see paragraph (b)(1)), the Adjusting Index, the Base Cost (see paragraph (c)), the mathematical calculations used to arrive at the adjusted contract unit price, and the effective date of the adjustment.

(i) In the event that \_\_\_\_\_<sup>17</sup> discontinues, or alters substantially, its method of calculating the Index cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines that the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

(j) Any dispute arising under this clause shall subject to the "Disputes" clause of the contract.

(End of clause)

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Notes:

<sup>17</sup> Enter in the name of the entity whose index is used in the clause. In the example for ambulance services using the "Weekly U.S. Retail Gasoline Prices, Regular Grade" index; the Contracting Officer would enter the "Energy Information Administration, Department of Energy".

**852.216-73 Economic Price Adjustment—State Nursing Home Care for Veterans.**

As prescribed in 816.203-4(e)(3), insert the following clause:

**ECONOMIC PRICE ADJUSTMENT—STATE NURSING HOME CARE  
FOR VETERANS (MAR 2018)**

This clause does not apply to rates for non-Medicaid nursing homes.

(a) *Rate Determination.* The per diem rate is established by the current Medicaid rate for Medicaid approved nursing home care plus a fair market amount (percentage) to cover the costs of supplies, services, and equipment above that provided under Medicaid established by the local State Medicaid Agency (SMA). Rates established after the effective date of this contract will require a modification to the contract by the Contracting Officer.

(1) The Medicaid rate covers room, board, and routine nursing care services.

(2) For all levels of nursing care a percentage is added for routine ancillary services/supplies, such as drugs, nursing supplies, oxygen (occasional use), x-ray, laboratory, physician visits, and rental equipment.

(3) Special equipment, e.g. Clinitron bed, is not considered routine ancillary services (and may not be provided by the VA).

(4) Drug costs which comprise more than eight and one-half percent (8.5%) of the per diem rate are generally not considered routine ancillary supplies (and may not be provided by the VA).

(5) Rehabilitation therapies will be provided as distinct levels of care, *i.e.*, skilled, intermediate, and custodial care. Hospice Care and Dialysis are not included in the rate. Payment for Hospices and Dialysis services is provided by the VA or other payers as determined by the Veteran with the VA's Approval.

(b) *Economic Price Adjustment.* This clause does not apply to ancillary services that may be added or deleted from the agreement.

(1) The per diem rate(s) will apply throughout the term of this contract, including extension period(s). The rate(s) may be adjusted only to reflect a change in a Medicaid rate as authorized by the SMA. Normally, this will be on an annual basis. The negotiated percentage above the Medicaid rate, to cover the all-inclusive nature of the contract, will not be renegotiated; but will be applied and added to the new Medicaid rate for the adjusted per diem rate for each level of care item. In this

regard, new rates will be negotiated requiring a modification to the contract. Each per diem price adjustment under this clause is subject to the following limitations:

(2) Any adjustment shall be limited to the effect of increases or decreases in the approved SMA's patient care components within the affected Medicaid groups.

(3) Adjustments will occur no more frequently than those issued by the SMA.

(4) No adjustments are made until the Contracting Officer receives from the SMA an authenticated copy of the new rates signed and dated at the top right of the document by the authorized nursing home official. Within ten days after this occurs, the Contracting Officer will execute an approval signature and date at the approximate locations of the nursing home official's signature, the action of which will serve as the effective date of the adjusted rate. A copy of the fully executed document will be sent to the nursing home official for record keeping purposes.

(End of clause)

#### **852.216-74 Economic Price Adjustment—Medicaid Labor Rates.**

As prescribed in 816.203-4(e)(4), insert the following clause:

##### **ECONOMIC PRICE ADJUSTMENT—MEDICAID LABOR RATES (MAR 2018)**

This clause does not apply to rates for non-Medicaid nursing homes.

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the Medicaid rate set by the State Medical Agency (SMA) for contract line item increases or decreases in the Schedule. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and the amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) The Contracting Officer and the Contractor shall negotiate a price adjustment to the contract's unit prices and its effective date upon receipt of the notice and data under paragraph (a) of this clause. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases of the Medicaid labor rates (including fringe benefits) shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract as follows:



- (1) Include the price adjustment and its effective date;
- (2) Revise the Medicaid labor rates (including fringe benefits) as shown in the Schedule to reflect the increases or decreases resulting from the SMA adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Adjustment shall be limited to the effect on unit prices of the increases or decreases of the Medicaid rates of pay for labor (including fringe benefits) shown in the Schedule. There shall be no adjustment for changes in rates or unit prices other than those shown in the Schedule.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least three percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases made under this clause.

(d) The Contracting Officer, precluding certified cost and pricing data may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

### **852.216-75 Economic Price Adjustment Clause—Fuel Surcharge.**

As prescribed in 816.203-4(e)(5), insert the following clause:

**ECONOMIC PRICE ADJUSTMENT CLAUSE—FUEL SURCHARGE  
(MAR 2018)**

(a) To the extent that contract fuel cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this contract for any option periods do not include any amount to protect against such contingent fuel cost increases.

(b) The fuel cost index, for the purpose of price adjustment under this clause, shall be the "Weekly Retail On-Highway Diesel Prices Index." The Base Fuel Cost, for the purpose of price adjustments under this clause, shall be the most recent Index Weekly Average Diesel Fuel Price per gallon published prior to the closing date for receipt of offers, or the due date for receipt of final proposal revisions if discussions are held.

(c) For purposes of this clause, it will be conclusively presumed that x% increase or decrease of the Base Fuel Cost represents a reasonable fluctuation of diesel fuel prices. The Base Fuel Cost (+ / -) x% price range will be determined for the base contract year and will remain constant throughout the life of the contract, including option years. Base Fuel Cost price range is documented at time of contract award.

(d) Increases (or decreases) in the diesel fuel costs (Base Fuel Cost x%) as listed on the Index two weeks prior to the end of each calendar quarter can trigger a request from the Contractor to the Government (or from the Government to the Contractor) for cost adjustments. Notice must be in writing to the Subsistence Prime Vendor (SPV) Contracting Officer (or Contracting Officer's Representative) no less than ten days prior to the beginning of the next quarter.

(e) Since fuel cost is only a part of the SPV Contracted distribution cost, the adjustment will be made as a penny per delivered case for every ten cent fuel price per gallon increase or decrease to the Base Fuel Cost x%. The difference is rounded down to the nearest whole cent and will be added to last line of each invoice noted as "Fuel Adjustment".

Example calculation of fuel price change:	Price \$2.50 Base (+ or -) 15% Average National Diesel Fuel \$2.88 - \$2.13
3rd QTR (3rd week June) first year	\$3.05 - 2.88 = \$ .17 (rounded down to 10 cents) Add one cent per delivered case to each invoice,
Fuel Price \$3.05 Calculation:	starting first Monday of July.

3rd QTR Diesel Fuel Price decrease	\$2.13 - 1.80 = \$ .33 (rounded down to \$.30 cents) Credit each invoice
\$1.80 Calculation:	\$.03 cents per delivered case.

(f) Once approved, the date for contract fuel price adjustment will be the first Monday of the first month of each quarter unless otherwise designated at time of contract award.

(g) The Contracting Officer shall retain a copy of the Base Fuel Index establishing the Base Fuel Cost and the calculation of the price range incorporating the (+/-) x% adjustment in the contract file. All subsequent changes will be documented within the contract file and communicated to the Contractor and VA SPV customers via email one week prior to the fuel price adjustment implementation.

(h) Any adjustments for fuel price changes will only be implemented if requested in writing, reviewed by both parties, and provided within the designated time frames. No retroactive cost adjustments will be made. A contract modification will be issued at inception of first increase or decrease detailing Base Fuel Cost, price range, and calculation of first fuel adjustment charge. Adjustment will remain in effect with quarterly calculation changes as needed until price falls within Base Fuel Cost price range. A contract modification will be issued to terminate the adjustment when price returns to Base Fuel Cost (+/-) % price range.

(i) In the event that "the Energy Information Administration, Department of Energy" discontinues, or substantially alters its method of calculating the national average diesel fuel prices cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute Index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

(j) Any dispute arising under this clause shall be determined in accordance with and subject to the "Disputes" clause of the contract.

(End of clause)

#### **852.217-70 Contract Action Definitization.**

As prescribed in 817.7005(a), insert the following clause:

#### **CONTRACT ACTION DEFINITIZATION (JUL 2019)**

(a) A [*Insert specific type of contract action*] is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract action that will include all clauses required by the Federal

Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, all clauses required by law on the date of execution of the definitive contract action, and any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a \_\_\_\_\_ *[Insert type of proposal, e.g., fixed-price, or cost-and-fee]* proposal with cost or pricing data, as appropriate, supporting it.

(b) The schedule for definitizing this contract action is as follows *[Insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy plans, subcontracting plans, and cost or pricing data]*.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of a Contracting Officer one level above, determine a reasonable price or fee in accordance with FAR subpart 15.4 and FAR part 31, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to FAR 52.216-24, Limitation of Government Liability.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract action resulting from this undefinitized contract action will include a negotiated \_\_\_\_\_ [*Insert “cost/price ceiling” or “firm-fixed-price”*] in no event to exceed \_\_\_\_\_ [*Insert the not-to-exceed amount*].

(End of clause)

### **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.

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.

(c) 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.

(d) 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.]

[Deviation per [Class Deviation](#) from VA Acquisition Regulation Part 819—Small Business Programs and Part 852-Solicitation Provisions and Contract Clauses, dated July 12, 2019 revises VAAR clauses at 852.219-10 and 852.219-11. The class deviation effectively updates the language set forth in Class Deviation—Veterans First Contracting Programs (VFCP 2016), Attachment 9—VAAR Part 819, Small Business Programs, and Attachment 10—VAAR Part 852, Solicitation Provisions and Contract Clauses, dated July 25, 2016. The remaining text in Attachments 9 and 10 in Class Deviation VFCP 2016, continues to be in effect. The class deviation incorporates the Small Business Administration’s regulatory and legislative changes and clarifies the applicability of limitations on subcontracting and nonmanufacturer requirements to contracts awarded under the VFCP. 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 2019) (DEVIATION)**

(a) Definition. For the Department of Veterans Affairs, “Service-disabled veteran-owned small business concern or SDVOSB”:

(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.va.gov>); and

(v) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, including the nonmanufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406 and 125.6, provided that any reference therein to a service-disabled veteran-owned small business concern (SDVO SBC), is to be construed to apply to a VA verified and VIP-listed SDVOSB. The nonmanufacturer rule and the limitations on subcontracting apply to all SDVOSB and VOSB set-asides and sole source contracts.

(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 eligible service-disabled veteran-owned small business concerns. Only VIP-listed service-disabled veteran-owned small business concerns (SDVOSBs) may submit offers in response to this solicitation. Offers received from concerns that are not VIP-listed service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed service-disabled veteran-owned small business concern that meets the size standard for the applicable NAICS code.

(c) *Representation.* By submitting an offer, the prospective contractor represents that it is an eligible SDVOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70. Pursuant to 38 U.S.C. 8127(e), only VIP-listed SDVOSBs are considered eligible. Therefore, any reference in 13 CFR part 121 and 125 to a service-disabled veteran-owned small business concern (SDVO SBC), is to be construed to apply to a VA verified and VIP-listed SDVOSB and only such concern(s) qualify as similarly situated. The offeror must also be eligible at the time of award.

(d) *Agreement.* When awarded a contract (see [FAR 2.101](#), Definitions), including orders under multiple-award contracts, or a subcontract, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and 125, including the nonmanufacturer rule and limitations on subcontracting requirements in 13 CFR part 121.406 and 125.6, provided that for purposes of the limitations on subcontracting, only VIP-listed SDVOSBs shall be considered eligible and/or “similarly situated” (i.e.,

a firm that has the same small business program status as the prime contractor). An independent contractor shall be considered a subcontractor. An otherwise eligible firm further agrees to the following:

(1) *Services*. In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(2) *Supplies or products*.

(i) In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(ii) In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) is granted.

(3) *General construction*. In the case of a contract for general construction, it will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(4) *Special trade contractors*. In the case of a contract for special trade contractors, it will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(5) *Subcontracting*. Any work that a VIP-listed SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, cost of materials is excluded and not considered to be subcontracted. For mixed contracts and additional limitations, refer to 13 CFR 125.6.

(e) *Joint ventures*. A joint venture may be considered an SDVOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any reference therein to service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to mean a VIP-listed SDVOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(f) *Precedence*. For any inconsistencies between the requirements of the SBA program for service-disabled veteran-owned small business concerns and the VA Veterans First Contracting Program, as defined in VAAR subpart 819.70 and this clause, the VA Veterans First Contracting Program requirements have precedence.

(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.]

[Deviation per Class Deviation from VA Acquisition Regulation Part 819—Small Business Programs and Part 852-Solicitation Provisions and Contract Clauses, dated July 12, 2019 revises VAAR clauses at 852.219-10 and 852.219-11. The class deviation effectively updates the language set forth in Class Deviation—Veterans First Contracting Programs (VFCP 2016), Attachment 9—VAAR Part 819, Small Business Programs, and Attachment 10—VAAR Part 852, Solicitation Provisions and Contract Clauses, dated July 25, 2016. The remaining text in Attachments 9 and 10 in Class Deviation VFCP 2016, continues to be in effect. The class deviation incorporates the Small Business Administration’s regulatory and legislative changes and clarifies the applicability of limitations on subcontracting and nonmanufacturer requirements to contracts awarded under the VFCP. 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 2019) (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 part 74 and is so listed in the Vendor Information Pages (VIP) database, (<https://www.vip.vetbiz.va.gov>); and

(iv) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, including the nonmanufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406 and 125.6, provided that any reference therein to a service-disabled veteran-owned small business concern (SDVO SBC), is to be construed to also apply to a VA verified and VIP-listed VOSB. The nonmanufacturer rule and the limitations on subcontracting apply to all VOSB set-asides and sole source contracts.

(2) “Veteran” is defined in 38 U.S.C. 101(2).

(b) *General.*

(1) Offers are solicited only from eligible veteran-owned small business concerns. Only VIP-listed veteran-owned small business concerns (VOSB) may submit offers in response to this solicitation. A VIP-listed service-disabled veteran-owned small business concern will be considered a VIP-listed veteran-owned small business concern for this purpose and must also meet the criteria identified in paragraph (a)(1). Offers received from concerns that are not VIP-listed veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed veteran-owned small business concern that meets the size standard for the applicable NAICS code.

(c) *Representation.* By submitting an offer, the prospective contractor represents that it is an eligible VOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70. Pursuant to 38 U.S.C. 8127(e), only VIP-listed VOSBs are considered eligible. Therefore, any reference in 13 CFR 121 and 125 to a service-disabled veteran-owned small business concern (SDVO SBC), is to be construed to apply to a VA verified and VIP-listed SDVOSB/VOSB and only such concern(s) qualify as similarly situated. The offeror must also be eligible at the time of award.

(d) *Agreement.* When awarded a contract (see [FAR 2.101](#), Definitions), including orders under multiple-award contracts, or a subcontract, a VOSB agrees that in the performance of the contract, the VOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and 125, including the nonmanufacturer and limitations on subcontracting requirements in 13 CFR 121.406 and 125.6, provided that for purposes of limitations on subcontracting, only VIP-listed VOSBs are considered eligible and/or “similarly situated” (i.e., a firm that has the same small business program status as the prime contractor). An independent contractor shall be considered a subcontractor. An otherwise eligible firm further agrees to the following:

(1) *Services*. In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed VOSBs.

(2) *Supplies or products*.

(i) In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed VOSBs.

(ii) In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) is granted.

(3) *General construction*. In the case of a contract for general construction, it will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed VOSBs.

(4) *Special trade contractors*. In the case of a contract for special trade contractors, it will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed VOSBs.

(5) *Subcontracting*. Any work that a VIP-listed VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, cost of materials is excluded and not considered to be subcontracted. For mixed contracts and additional limitations refer to 13 CFR 125.6.

(e) *Joint ventures*. A joint venture may be considered a VOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18, provided, that any reference therein to service-disabled veteran-owned small business concern (SDVO SBC), shall also apply equally to a veteran-owned small business (VOSB) and is to be construed for the VA as only a VIP-listed VOSB.

(f) *Precedence*. For any inconsistencies between the requirements of the SBA program for service-disabled veteran-owned small business concerns and the VA Veterans First Contracting Program, as defined in VAAR subpart 819.70 and this clause, the VA Veterans First Contracting Program requirements have precedence.

(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)

[Deviation per Class Deviation to VA Acquisition Regulation (VAAR) 819.72, 852.219-74, 852.219-75, and 852.219-76, dated June 27, 2018, to add VAAR 819.72, VA Subcontracting Compliance Review Program and new clauses at 852.219-74, Limitations on Subcontracting—Monitoring and Compliance, 852.219-75, Subcontracting Commitments Monitoring and Compliance, and 852.219-76, Subcontracting Plans Monitoring and Compliance. VAAR 819.72 will implement VA's Subcontracting Compliance Review Program. The deviation also rescinds Information Letter 001AL-11-15, Subcontracting Compliance Review Program, dated June 8, 2011. This deviation will remain in effect until incorporated into the VAAR or the VAAM, or is otherwise rescinded.]

**852.219-74 Limitations on Subcontracting—Monitoring and Compliance.**

As prescribed in 819.7203(a) insert the following clause:

**LIMITATIONS ON SUBCONTRACTING—MONITORING AND COMPLIANCE (JUL 2018)(DEVIATION)**

(a) This solicitation includes

\_\_\_\_\_ [Fill-in  
clause/provision]

[Note: Contracting Officers must fill-in the applicable clause required to be included in sole-source and/or set-aside acquisitions (e.g., VA Acquisition Regulation (VAAR) 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside; [FAR 52.219-6](#), Notice of Total Small Business Set-Aside).]

(b) Accordingly, any contract resulting from this solicitation is subject to the limitation on subcontracting requirements in 13 CFR 125.6. The Contractor is advised

that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) retained by VA to assist in assessing the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirements specified in the clause. To that end, the support contractor(s) may require access to Contractor's offices where the Contractor's business records or other proprietary data are retained and to review such business records regarding the Contractor's compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

(End of clause)

#### **852.219-75 Subcontracting Commitments Monitoring and Compliance.**

As prescribed in 819.7203(b) insert the following:

#### **SUBCONTRACTING COMMITMENTS MONITORING AND COMPLIANCE (JUL 2018)(DEVIATION)**

(a) This solicitation includes the clause: 852.215-70 Service-disabled veteran-owned and veteran-owned small business evaluation factors. Accordingly, any contract resulting from this solicitation will include the clause 852.215-71 Evaluation factor commitments.

(b) The Contractor is advised that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) to assist in assessing Contractor compliance with the subcontracting commitments incorporated into the contract. To that end, the support contractor(s) may require access to the Contractor's business records or other proprietary data to review such business records regarding contract compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required

to sign an “Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement” to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor compliance with the subcontracting commitments.

(End of clause)

**852.219-76 Subcontracting Plans Monitoring and Compliance.**

As prescribed in 819.7203(c) insert the following clause:

**SUBCONTRACTING PLANS MONITORING AND COMPLIANCE  
(JUL 2018)(DEVIATION)**

(a) This solicitation includes [FAR 52.219-9](#), Small Business Subcontracting Plan, and VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirement.

(b) Accordingly, any contract resulting from this solicitation will include these clauses. The Contractor is advised in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) to assist in assessing the Contractor's compliance with the plan, including reviewing the Contractor's accomplishments in achieving the subcontracting goals in the plan. To that end, the support contractor(s) may require access to the Contractor's business records or other proprietary data to review such business records regarding the Contractor's compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required to sign an “Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement” to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in

FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor compliance with the subcontracting plan.

(End of clause)

**852.222-70 Contract Work-Hours and Safety Standards Act—Nursing Home Care for Veterans.**

As prescribed in 822.305, insert the following clause:

**CONTRACT WORK HOURS AND SAFETY STANDARDS—NURSING HOME CARE FOR VETERANS (MAY 2018)**

(a) No Contractor and subcontractor under this contract shall prohibit the payment of overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of Contract Work Hours and Safety Standards (the statute) (40 U.S.C. 3701, *et seq.*), provided—

(1) The Contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(2) 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;

(3) 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

(4) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(b) *Subcontracts.* The Contractor shall insert the text of this clause, including this paragraph (b), in subcontracts that at any subcontract tier. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (b) of this clause.

(End of clause)



**852.223-70 Instructions to Offerors—Sustainable Acquisition Plan.**

As prescribed in 823.103-71, when the Contracting Officer deems a Sustainable Acquisition Plan necessary, the Contracting Officer shall insert the following provision:

**INSTRUCTIONS TO OFFERORS—SUSTAINABLE ACQUISITION PLAN  
(SEP 2019)**

Offerors shall include a Sustainable Acquisition Plan in their technical proposals. The plan must describe the approach and quality assurance mechanisms for applying [FAR subpart 23.1](#), Sustainable Acquisition Policy and other Federal laws, regulations and Executive Orders governing sustainable acquisition. The plan shall clearly identify those products and services included in the proposal.

(End of provision)

**852.223-71 Safety and Health.**

As prescribed by 823.303-70, the Contracting Officer shall insert the following clause:

**SAFETY AND HEALTH (SEP 2019)**

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State, and local laws and regulations applicable to the work being performed under this contract. These laws are implemented or enforced by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) and other regulatory/enforcement agencies at the Federal, State, and local levels.

(1) Additionally, the Contractor shall comply with the following regulations when developing and implementing health and safety operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

(i) 29 CFR 1910.1030, Blood-borne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories. These regulations are available at <https://www.osha.gov/>.

(ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.) Copies are available from the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(2) The following Government guidelines are recommended for developing

and implementing health and safety operating procedures and practices for both personnel and facilities:

(i) Biosafety in Microbiological and Biomedical Laboratories, Centers for Disease Control and Prevention (CDC), available at <http://www.cdc.gov/biosafety/publications/index.htm>.

(ii) Prudent Practices in the Laboratory, National Research Council, National Academy Press, Washington, DC 20001, available at <https://www.nap.edu>.

(b)(1) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials; the injury or death of any person; or damage to property incidental to work performed under the contract resulting from toxic or hazardous materials and resulting in any or all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency.

(2) The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State, or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(c) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State, or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any such stop work order shall form the basis for a request for extension or costs or damages by the Contractor.

(d) The Contractor shall insert this clause in each subcontract involving toxic substances, hazardous materials. The Contractor is responsible for the compliance of its subcontractors with the provisions of this clause.

(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 (MAR 2018)**

(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 contract. 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, servants, 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, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of this 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 defined, 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, 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 the VAAR at 828.106-71, insert the following clause:

**ASSISTING SERVICE-DISABLED VETERAN-OWNED AND VETERAN- OWNED SMALL BUSINESSES IN OBTAINING BONDS (DEC 2009)**

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)

**852.228-73 Indemnification of Contractor—Hazardous Research Projects.**

As prescribed in 828.7003, insert the following clause:

**INDEMNIFICATION OF CONTRACTOR—HAZARDOUS RESEARCH PROJECTS (MAR 2018)**

(a) This contract involves work with a risk of an unusually hazardous nature as specifically defined in the contract. The government shall indemnify the Contractor, including subcontractors of any tier, against losses or liability specified in paragraphs (b) and (c) of this clause if—

(1) The losses or liability arise out of or results from a risk defined in this contract as unusually hazardous; and

(2) The losses or liability are not covered by the financial protection required by paragraph (c).

(b) The Government shall indemnify a Contractor for:

(1) Liability (including reasonable expenses of litigation or settlement) to third persons for death, bodily injury, or loss of or damage to property from a risk that the contract defines as unusually hazardous. This indemnification shall not cover liability under State or Federal worker's injury compensation laws to employees of the contractor who are both:

(i) Employed at the site of the contract work; and

(ii) Working on the contract for which indemnification is granted.

(2) The Government shall also indemnify the Contractor for loss of or damage to property of the Contractor from a risk that the contract defines as unusually hazardous.

(c) A Contractor shall have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the contractor's property. Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination that provides the maximum amount required. The financial protection provided must meet one of the following—

(1) The maximum amount of insurance available from private sources; or

(2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(d) Actions in event of a claim—

(1) The Contractor shall notify the Contracting Officer of any claim or suit against the Contractor for death, bodily injury, or loss of or damage to property; and

(2) The Government may elect to control or assist in the defense of any suit or claim for which indemnification is provided in the contract.

(End of clause)

**852.229-70 [Reserved]**

**852.229-71 [Reserved]**

**852.232-70 Payments Under Fixed-Price Construction Contracts (Without NAS-CPM).**

As prescribed in 832.111-70, insert the following clause in contracts that do not contain a section entitled "Network Analysis System—Critical Path Method (NAS-CPM)":

**PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS  
(WITHOUT NAS-CPM) (NOV 2018)**

The clause [FAR 52.232-5](#), Payments Under Fixed-Price Construction Contracts, 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 paragraph (a)(3) 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 work activity/event for each building or unit of the contract, as instructed by the resident engineer.

(1) The work activities/events shall be subdivided into as many sub-activities/events as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and the resident engineer may require the Contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sums of the sub-activities/events, as applied to each work activity/event, shall equal the total cost of such work activity/event. The total cost of all work activities/events 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 in the following table 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.

<u>VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM</u>	
<b>System</b>	<b>Percent</b>
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 its 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 the Contracting Officer approves, including but not limited to the following—

(1) The materials or equipment are in accordance with the contract

requirements and/or approved samples and shop drawings;

(2) The materials and/or equipment are approved by the resident engineer;

(3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;

(4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and

(5) The Contractor obtains the concurrence of its surety for off-site storage.

(e) 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 requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

(f) The Contracting Officer will notify the Contractor in writing within 10 calendar-days of exercising retainage against any payment in accordance with FAR clause 52.232-5(e). The notice shall disclose the amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of clause)

*Alternate I* (NOV 2018). 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.



**852.232-71 Payments Under Fixed-Price Construction Contracts (Including NAS-CPM).**

As prescribed in 832.111-70, insert the following clause in contracts that contain a section entitled "Network Analysis System—Critical Path Method (NAS-CPM)":

**PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (INCLUDING NAS-CPM) (NOV 2018)**

The clause [FAR 52.232-5](#), Payments Under Fixed-Price Construction Contracts, 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 paragraph (a)(3) 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 in accordance with the requirements of section "Network Analysis System—Critical Path Method (NAS—

CPM)” 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 the resident engineer may require the Contractor to submit its original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total cost of all work activities/events shall equal the contract price.

(3) Insurance and similar items shall be prorated and included in the cost of each work activity/event cost of the critical path method (CPM).

(4) The CPM shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this clause. The percentages listed in paragraph (b)(5) will be used to determine the cost of adjust and test work activities/events 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

<b>System</b>	<b>Percent</b>
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 its 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 the Contracting Officer approves, including but not limited to the following—

(1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;

(2) The materials and/or equipment are approved by the resident engineer;

(3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;

(4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and

(5) The Contractor obtains the concurrence of its surety for off-site storage.

(e) 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 requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

(f) The Contracting Officer will notify the Contractor in writing within 10 calendar-days of exercising retainage against any payment in accordance with FAR clause 52.232-5(e). The notice shall disclose the amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of clause)

*Alternate 1* (NOV 2018). 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) 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 CPM 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 deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

#### **852.232-72 Electronic Submission of Payment Requests.**

As prescribed in 832.7001-2, insert the following clause:

##### **ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2018)**

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* has the meaning given in [FAR 32.001](#);

(2) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment;

(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, email, and scanned documents are not acceptable electronic forms for submission of payment requests;

(4) *Invoice payment* has the meaning given in [FAR 32.001](#); and

(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 at the current website address provided in the contract.

(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).

(d) *Invoice requirements.* Invoices shall comply with FAR 32.905.

(e) *Exceptions.* If, based on one of the circumstances in this paragraph (e), 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 833.106-70(a), insert the following provision:

**PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (OCT 2018)**

(a) Any protest filed by an interested party shall—

(1) Include the name, address, fax number, email 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 833.106-70(b), insert the following provision:

**ALTERNATE PROTEST PROCEDURE (OCT 2018)**

(a) As an alternative to filing a protest with the Contracting Officer, an interested party may file a protest by mail or electronically with: Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (003A2C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or Email: [EDProtests@va.gov](mailto:EDProtests@va.gov).

(b) The protest will not be considered if the interested party has a protest on the same or similar issue(s) 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  
(APR 2019)**

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) The Contractor shall—

- (1) Check all drawings and specifications furnished immediately upon receipt;
- (2) Compare all drawings and the specifications, and verify the figures before laying out the work;
- (3) Promptly notify the Contracting Officer of any discrepancies;
- (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
- (5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

- (1) Drawings of greater detail shall govern over drawings of lesser detail unless specifically noted otherwise; and
- (2) Figures and numerical quantities noted on drawings govern over scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall

perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

<u>Title</u>	<u>File</u>	<u>Drawing No.</u>
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(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 (APR 2019)**

(a) In accordance with [FAR 52.236-1](#), the contract work accomplished on the site by laborers, mechanics, and foreman/superintendent on the Contractor's payroll and under their direct supervision shall be used in establishing the percent of work to be performed by the Contractor. Cost of material and equipment installed by such labor may be included. The work by the Contractor's executive, administrative and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The Contractor shall submit, simultaneously with the schedule of costs required by the Payments under Fixed-Price Construction Contracts clause of the contract, a statement designating the portions of contract work to be performed with the Contractor's own forces. The approved schedule of costs will be used in determining the value of a work activity/event, or portions thereof, of the work for the purpose of this article.

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

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

(End of clause)

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



(b) The Contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01310 or 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the Contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the Contractor's forces for the purpose of this article.

**852.236-73 [Reserved]**

**852.236-74 [Reserved]**

**852.236-76 [Reserved]**

**852.236-77 [Reserved]**

**852.236-78 [Reserved]**

**852.236-79 Contractor Production Report.**

As prescribed in 836.573, insert the following clause:

**CONTRACTOR PRODUCTION REPORT (APR 2019)**

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

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

(End of clause)

**852.236-80 Subcontracts and Work Coordination.**

As prescribed in 836.574, insert the following clause:

**SUBCONTRACTS AND WORK COORDINATION (APR 2019)**

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the Contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives 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 or subcontractor employee who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the Contracting Officer to be incompetent, careless, or otherwise objectionable.

(End of clause)

*Alternate 1* (APR 2019). For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The Contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes two inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and 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.

**852.236-82 [Reserved]**

**852.236-83 [Reserved]**

**852.236-84 [Reserved]**

**852.236-85 [Reserved]**

**852.236-86 [Reserved]**

**852.236-87 [Reserved]**

**852.236-88 [Reserved]**

**852.236-89 [Reserved]**

**852.236-90 Restriction on Submission and Use of Equal Products.**

As prescribed in 836.202-70, insert the following clause in solicitations and contracts when it is determined that only one product will meet the Government's minimum needs and submission of "equal" products is not permitted:

**RESTRICTION ON SUBMISSION AND USE OF EQUAL PRODUCTS  
(APR 2019)**

This clause applies to the following items: (*Contracting Officer fill-in*)

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Notwithstanding the "Material and Workmanship" clause of this contract, [FAR 52.236-5\(a\)](#), nor any other clause or provision, only brand name products for the

items listed above will be authorized for use on this contract.

(End of clause)

**852.236-91 [Reserved]**

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

As prescribed in 836.580, insert the following provision:

**NOTICE TO BIDDERS—ADDITIVE OR DEDUCTIVE BID LINE ITEMS  
(APR 2019)**

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

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

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

(i) Is otherwise eligible for award; and

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

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

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

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

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

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

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

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

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

(End of provision)

#### **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)

**852.242-70 Government Construction Contract Administration.**

As prescribed in 842.271, insert the following clause in all construction solicitations and contracts expected to exceed the micro-purchase threshold for construction. This is a fill-in clause.

**GOVERNMENT CONSTRUCTION CONTRACT ADMINISTRATION (APR 2019)**

(a) Contract administration functions set forth in [FAR 42.302](#) are hereby delegated to:

*[Insert name and office address of Contracting Officer]*

(b) The work will be under the direction of a Department of Veterans Affairs Contracting Officer, who may designate another VA employee to act as resident engineer at the construction site.

(c) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements. 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.

(d) The Contracting Officer identified in paragraph (a) may further delegate the responsibilities below to the following warranted personnel on site:

*[Insert name and office address of individual with limited authority]*

(1) Conduct post-award orientation conferences.

(2) Issue administrative changes, correcting errors or omissions in typing, Contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes (see [FAR 43.101](#)).

(3) For actions not to exceed \$ [insert dollar amount] negotiate and execute supplemental agreements incorporating Contractor proposals resulting from change orders issued under the Changes clause.

(4) Negotiate and execute supplemental agreements changing contract delivery schedules where the time extension does not exceed [insert number] calendar days.

(End of clause)

**852.243-70 Construction Contract Changes—Supplement.**

As prescribed in 843.205-70, the Contracting Officer shall insert this clause in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold. The Contracting Officer shall fill in the number of days in which a Contractor must assert its right to an equitable adjustment; however, such amount shall not exceed 60 calendar days.

**CONSTRUCTION CONTRACT CHANGES—SUPPLEMENT (SEP 2019)**

The FAR clauses [52.243-4](#) Changes, [52.243-5](#) Changes and Changed Conditions and [52.236-2](#) Differing Site Conditions are supplemented as follows:

(a) Submission of request for equitable adjustment proposals. When directed by the Contracting Officer or requested by the Contractor, the Contractor shall submit proposals for changes in the work in writing to the Contracting Officer or Administrative Contracting Officer (ACO).

(1) The Contractor must provide an itemized breakdown for changes exceeding the micro-purchase threshold (see [FAR 2.101](#)).

(2) The itemized breakdown shall include materials, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. Labor costs shall be identified with specific material placed or operation performed.

(3) Proposals shall be submitted to the Contracting Officer or ACO as expeditiously as possible, but not later than [fill-in] calendar days, after receipt of a written change order by the Contracting Officer.

(4) Proposals shall be signed by each subcontractor participating in the change.

(5) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (a)(3) of this clause is not received within the time period specified in paragraph (a)(3), or if agreement has not been reached.

(b) Paragraphs (1) through (b)(5) of this clause and the following paragraphs (b)(1) and (2) apply to proposals for changes in the work costing \$500,000 or less:

(1) As a basis for negotiation, 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 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. This declining scale will also be used to negotiate the prime Contractor's or upper-tier subcontractor's fee when work is performed by lower-tier subcontractors and will be based on the net increased cost to the prime or upper-



tier subcontractor, as applicable. Profit (fee) shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs. Allowable percentages on changes will not exceed the following;

- (i) 10 percent overhead and/or 10 percent profit (fee) on the first \$20,000;
- (ii) 7-1/2 percent overhead and/or 7-1/2 percent profit (fee) on the next \$30,000;
- (iii) 5 percent overhead and/or 5 percent profit (fee) on a balance over \$50,000.

(2) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (3) is not received within 30 calendar days, or if agreement has not been reached.

(c)(1) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security policy, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made. 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.

(2) 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 or subcontractors' portions of cost computed in accordance with this clause.

(3) 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 it 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.

(End of clause)

**852.246-70 [RESERVED]**

**852.246-71 Rejected Goods.**

As prescribed in 846.370-1, insert the following clause:

**REJECTED GOODS (OCT 2018)**

(a) *Supplies and equipment.* Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the Contractor's address at the Contractor's risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the Contractor.

(b) *Perishable supplies.* The Contractor shall remove rejected perishable 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 846.370-2, insert the following clause:

**FROZEN PROCESSED FOODS (OCT 2018)**

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 846.370-3, insert the following clause:

**NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING  
REQUIREMENTS (OCT 2018)**

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 [RESERVED]**

#### **852.246-75 Warranty of Construction—Guarantee Period Services.**

As prescribed in 846.702-70(e), insert the following clause:

##### **WARRANTY OF CONSTRUCTION—GUARANTEE PERIOD SERVICES (OCT 2018)**

The clause 52.246-21, Warranty of Construction, is supplemented as follows:

Should the Contractor fail to complete 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)

#### **852.246-76 Purchase of Shellfish.**

As prescribed in 846.370-4 insert the following clause:

##### **PURCHASE OF SHELLFISH (OCT 2018)**

The supplier 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)

### **852.247-70 Determining Transportation Costs for Evaluation of Offers.**

As prescribed in 847.305-70, insert the following provision:

#### **DETERMINING TRANSPORTATION COSTS FOR EVALUATION OF OFFERS (OCT 2018)**

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.

<b>Area destination</b>	<b>Anticipated demand</b>	<b>Factor</b>
Oakland, California		3
Dallas, Texas		2
Omaha, Nebraska		3
Fort Wayne, Indiana		4
Atlanta, Georgia		3
<u>New York, New York</u>		<u>5</u>
Total of factors		20

(End of provision)

**852.247-71 Delivery Location.**

As prescribed in 847.302, insert a clause substantially as follows:

**DELIVERY LOCATION (OCT 2018)**

Shipment of deliverable items, other than reports, shall be to: \_\_\_\_\_ [*Contracting Officer shall insert appropriate identifying data*].

(End of clause)

**852.247-72 Marking Deliverables.**

As prescribed in 847.305-10(a), insert a clause substantially the same as:

**MARKING DELIVERABLES (OCT 2018)**

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: \_\_\_\_\_ [*Contracting Officer shall insert appropriate identifying data*].

(End of clause)

**852.247-73 Packing for Domestic Shipment.**

As prescribed in 847.305-10(b), insert the following clause:

**PACKING FOR DOMESTIC SHIPMENT (OCT 2018)**

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with regulations of carriers as applicable to the mode of transportation.

(End of clause)

**852.247-74 Advance Notice of Shipment**

As prescribed in 847.305-71(a), insert the following clause:

**ADVANCE NOTICE OF SHIPMENT (OCT 2018)**

\_\_\_\_\_ [*Insert number of work days*] work days prior to shipping item(s).

\_\_\_\_\_ [*Insert items to be shipped*], the Contractor shall furnish the anticipated

shipment date, bill of lading number (if applicable), and carrier identity to \_\_\_\_\_ *[Insert individual(s) to receive notification]* and to the Contracting Officer.

(End of clause)

### **852.247-75 Bills of Lading.**

As prescribed in 847.305-71(b), insert the following clause:

#### **BILLS OF LADING (OCT 2018)**

The purpose of this clause is to define when a commercial bill of lading or a Government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial bills of lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by [*company name*], and paid freight or comparable receipts are not obtainable.

Contract or Order Number: \_\_\_\_\_

Destination: \_\_\_\_\_."

(b) *Government bills of lading.*

(1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continental United States, i.e., Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: \_\_\_\_\_ *[Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]*. If time is limited, requests may be by telephone: \_\_\_\_\_ *[Insert appropriate telephone number]*. Requests for GBLs shall include the following information.

(i) Item identification/description.

- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional weight.
- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of clause)

**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 [RESERVED]**

**852.270-3 [RESERVED]**

**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)

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