



VETERANS AFFAIRS ACQUISITION REGULATION

January 2008 Edition

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SUBCHAPTER A—GENERAL

**PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION
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AUTHORITY: 38 U.S.C. 8123; 38 U.S.C. 8153; 38 U.S.C. 8303; 40 U.S.C. 121(c); 41 U.S.C. 1702; 41 U.S.C. 1707; and 48 CFR 1.301 through 1.304.

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801.000 Scope of part.

This part includes 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 VA issues the VAAR under the authority of 41 U.S.C. 1707 and 48 CFR 1.301 through 1.304, and other authorities as cited.

801.104 Applicability.

The FAR and the VAAR apply to all VA acquisitions made with appropriated funds unless otherwise specified in this regulation. Supply Fund monies (38 U.S.C. 8121) and General Post Funds (38 U.S.C. 8302) are appropriated funds.

801.104-70 Exclusions.

(a) *Restricted gifts.* 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).

(b) *Procurement of prosthetic appliances.* The VA may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the VA may determine to be proper, without regard to any other provision of law (38 U.S.C. 8123).

(c) *Sharing of health-care resources.* (1) To secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the VA may, when the VA determines it to be in the best interest of the prevailing standards of the Department medical care program, make arrangements, by contract or other form of agreement for the mutual use, or exchange of use, of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual.

(2) The VA may enter into a contract or other agreement under paragraph (c)(1) of this section if such resources are not, or would not be, used to their maximum effective capacity.

(3)(i) If the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers, the VA may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.

(ii) If the health-care resource required is a commercial service or the use of medical equipment or space, and is not to be acquired from an entity described in paragraph (c)(3)(i) of this section, any procurement of the resource may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring the resource, but only if the procurement is conducted in accordance with the simplified procedures prescribed in part 873. (38 U.S.C. 8153).

801.106 OMB approval under the Paperwork Reduction Act.

See VA Acquisition Manual (VAAM) M801.106 for a list of the information collection and recordkeeping requirements contained in this part that have been approved by the Office of Management and Budget.

Subpart 801.3—Agency Acquisition Regulations

801.301 Policy.

(a)(1) VA implementation and supplementation of the FAR is issued in the Veterans Affairs Acquisition Regulation (VAAR) under authorization and subject to the authority, direction, and control of the Secretary of Veterans Affairs. The VAAR contains—

- (i) Requirements of law;
- (ii) Agency policies;
- (iii) Delegations of FAR authorities;
- (iv) Deviations from FAR requirements; and

(v) Policies/procedures that have a significant effect beyond the internal operating procedures of VA or a significant cost or administrative impact on contractors or offerors.

(2) Relevant internal procedures, guidance, and information (PGI) that do not meet the criteria in paragraph (a)(1) of this section are issued in the Veterans Affairs Acquisition Manual (VAAM).

801.304 Agency control and compliance procedures.

The Principal Executive Director of VA's Office of Acquisition, Logistics and Construction is designated as the Department's Chief Acquisition Officer. The Executive Director for the Office of Acquisition and Logistics (OAL) is designated as the Department's Senior Procurement Executive (SPE). The SPE is responsible for amending the VAAR for compliance with FAR 1.304.

Subpart 801.4—Deviations from the FAR

801.403 Individual deviations.

The SPE may authorize individual deviations from the FAR and VAAR in accordance with FAR 1.403 when an individual deviation is in the best interest of the Government.

801.404 Class deviations.

The SPE may authorize class deviations from the FAR and VAAR when a class deviation is in the best interest of the Government.

Subpart 801.6—Career Development, Contracting Authority, and Responsibilities

801.601 General.

(a) The Senior Procurement Executive is granted the authority to appoint and terminate contracting officers. This authority is further delegated to the heads of the contracting activities (HCA) and others as appropriate. The SPE may also delegate authority to execute, award, and administer contracts, purchase orders, and other agreements to other VA officials, such as HCAs and contracting officers. All delegations of authority will be made in writing.

(b) HCAs may authorize the use of ordering officers to order supplies and services in accordance with the ordering limits identified in the contract or agreement or the specific ordering guide. Ordering officers shall be delegated in writing. The written delegation must be specific to the contract or agreement and articulate the limitations of the delegated authority. Ordering officers shall only place orders against the contract or agreement if it is awarded to a single awardee. Ordering officers may not negotiate contract terms and conditions, determine price reasonableness, or determine best value. If the contracting officer determines prior to award that ordering officers will be authorized to place orders against a contract or agreement, the contracting officer will furnish the contractor with the names of individuals delegated ordering officer authority by separate letter upon issuance of the contract.

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 a Government representative who lacked the authority to enter into that agreement on behalf of the Government.

(b) The approving authority and ratification official for unauthorized commitments is the HCA. This authority may be delegated to the chief of the contracting office or the equivalent for unauthorized commitments below \$25,000.

801.604 Contracting Officer's Representative (COR).

When the contracting officer intends to designate a Contracting Officer's Representative for a solicitation or contract, the contracting officer must include the clause in [852.201-70](#), Contracting Officer's Representative, in the solicitation and contract.

SUBCHAPTER A—GENERAL

PART 802—DEFINITIONS OF WORDS AND TERMS

Subpart 802.1 – Definitions

Sec.
802.101 Definitions

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

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Subpart 802.1 – Definitions
(Revised 2/16/23 and 2/24/2023)

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

802.101 Definitions. (DEVIATION)

A/E means architect/engineer.

Business associate (or *associate*) means an entity, including an individual (other than a member of the workforce of a covered entity), company, organization, or another covered entity, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191) Privacy Rule (45 CFR part 160), that performs or assists in the performance of a function or activity on behalf of the Veterans Health Administration (VHA) that involves the creating, receiving, maintaining, transmitting of, or having access to, protected health information (PHI), or that provides to or for VHA, certain services as specified in the HIPAA Privacy Rule that involve the disclosure of PHI to a contractor by VHA. The term also includes a subcontractor of a business associate that creates, receives, maintains, or transmits PHI or that stores, generates, accesses, exchanges, processes, or utilizes such PHI on behalf of the business associate.

Business Associate Agreement (BAA) means the agreement, as dictated by the HIPAA Privacy Rule (45 CFR part 160), between VHA and a business associate, which must be entered into in addition to the underlying contract for services and before any release of PHI can be made to the business associate, in order for the business associate to perform certain functions or activities on behalf of VHA.

Chief Acquisition Officer (CAO) means the Principal Executive Director, Office of Acquisition, Logistics, and Construction.

COR means Contracting Officer's Representative.

FAR means the [Federal Acquisition Regulation](#).

GAO means the Government Accountability Office.

Gray market items means original equipment manufacturer goods intentionally or

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unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the SPE.

Information system means, pursuant to 38 U.S.C. 5727, a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information whether automated or manual.

Information technology (see [FAR 2.101](#)) also means Information and Communication Technology (ICT).

Information technology-related contracts means those contracts which include services (including support services) and related resources for information technology as defined in this section.

OGC means the Office of the General Counsel.

Ordering Officer means the VA official authorized to order supplies and services against a FAR-based contract or agreement in accordance with the ordering limits identified in the contract or agreement or the specific ordering guide in accordance with [801.601\(b\)](#).

Privacy officer means the VA official with responsibility for implementing and oversight of privacy related policies and practices that impact a given VA acquisition.

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

SBA certification database means the database of certified VOSBs and SDVOSBs eligible to participate in the Veteran Small Business Certification Program (VetCert) (see 13 CFR 128) or the VA Veterans First Contracting Program.

SDVOSB/VOSB (see 13 CFR 128.102) when used as an initialism means a service-disabled veteran-owned small business (SDVOSB) and/or veteran-owned small business (VOSB) that has been certified by SBA as eligible to participate in the Veteran Small Business Certification Program (VetCert) or the VA Veterans First Contracting Program after January 1, 2023 and appearing in the SBA certification database. The term is synonymous with certified small business concerns owned and controlled by Veterans.

Security plan means a formal document that provides an overview of the security requirements for an information system or an information security program and describes the security controls in place or planned for meeting those requirements.

Sensitive personal information means, with respect to an individual, any

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information about the individual maintained by VA, including but not limited to the following:

(1) Education, financial transactions, medical history, and criminal or employment history.

(2) Information that can be used to distinguish or trace the individual's identity, including but not limited to name, Social Security Number, date and place of birth, mother's maiden name, or biometric records.

Service-disabled Veteran-owned small business (SDVOSB) or small business concern owned and controlled by service-disabled Veterans or Veterans with service-connected disabilities has the same meaning as *service-disabled veteran-owned small business concern* defined in 15 U.S.C. 632(q)(2), except that for acquisitions and subcontracts authorized by 38 U.S.C. 8127 and 8128 under the Veterans First Contracting Program, these businesses must be certified pursuant to 13 CFR 128 and listed as such in the SBA certification database.

Small business concern has the same meaning as defined in [FAR 2.101](#).

SPE means the Senior Procurement Executive who is also the Executive Director, Office of Acquisition and Logistics. The SPE is responsible for the management direction of the VA acquisition system.

VA means the Department of Veterans Affairs.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

VA Information Security Rules of Behavior for Organizational Users / VA National Rules of Behavior means a set of VA rules that describes the responsibilities and expected behavior of users of VA information or information systems.

VA Rule of Two means the determination process mandated in 38 U.S.C. 8127(d)(1) whereby a contracting officer of the Department shall award contracts on the basis of competition restricted to certified small business concerns owned and controlled by Veterans if the contracting officer has a reasonable expectation that two or more SDVOSBs/VOSBs will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. For purposes of this VA specific rule, a service-disabled Veteran-owned small business (SDVOSB) or a Veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), and VAAR [819.7003](#) and be listed as certified in the SBA certification database.

VA sensitive information means all VA data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information and includes sensitive personal information. The term includes information where

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improper use or disclosure could adversely affect the ability of VA to accomplish its mission, proprietary information, records about individuals requiring protection under various confidentiality provisions such as the Privacy Act and the HIPAA Privacy Rule, and information that can be withheld under the Freedom of Information Act. Examples of VA sensitive information include the following: individually-identifiable medical, benefits, and personnel information; financial, budgetary, research, quality assurance, confidential commercial, critical infrastructure, investigatory, and law enforcement information; information that is confidential and privileged in litigation such as information protected by the deliberative process privilege, attorney work-product privilege, and the attorney-client privilege; and other information which, if released, could result in violation of law or harm or unfairness to any individual or group, or could adversely affect the national interest or the conduct of Federal programs.

Veteran-owned small business (VOSB) has the same meaning as *Veteran-owned small business concern* defined in 15 U.S.C. 632(q)(3), except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as certified in the SBA certification database. SDVOSBs are also considered VOSBs, as long as they are listed as certified in the SBA certification database.

Veterans First Contracting Program means the program authorized by Public Law 109-461 (38 U.S.C. 8127 and 8128), as implemented in subpart 819.70. This program applies to all VA contracts (see [FAR 2.101](#) for the definition of contracts) as well as Blanket Purchase Agreements (BPAs), Basic Ordering Agreements (BOAs), and orders against the Federal Supply Schedules (FSS), unless otherwise excluded by law.

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

SUBCHAPTER A—GENERAL

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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Subpart 803.70—[Reserved]

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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PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 803.1—[Reserved]

Subpart 803.2—Contractor Gratuities to Government Personnel
(Revised 5/16/2018)

803.203 Reporting suspected violations of the Gratuities clause.

- (a) Any VA employee must report a suspected violation of the Gratuities clause to the contracting officer or a higher level VA official.
- (b) The report must identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.
- (c) The contracting officer or higher level official must supplement the file with appropriate information and promptly forward the report to the DSPE with copies to the VA Office of the Inspector General and the Assistant Secretary for Management.

803.204 Treatment of violations.

In providing the notice and hearing required by [FAR 3.204](#), the following applies—

- (a) The SDO shall determine whether or not a violation of the Gratuities clause, [52.203-3](#) has occurred and what action will be taken under [FAR 3.204\(c\)](#).
- (c) When the SDO determines that a violation has occurred and that debarment is being considered, he or she shall follow procedures at [809.406-3](#).

Subpart 803.3—[Reserved]

Subpart 803.4—[Reserved]

Subpart 803.5—Other Improper Business Practices
(Revised 5/16/2018)

803.570 Commercial advertising.

803.570-1 Policy.

VA policy prohibits contractors from making references in its commercial

Part 803—Improper Business Practices and Personal Conflicts of Interest

advertising to VA contracts in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent of this policy is to preclude the appearance of bias toward any product or service.

803.570-2 Contract clause.

The contracting officer shall insert the clause at [852.203-70](#), Commercial advertising, in solicitations and contracts expected to equal or exceed the micro-purchase threshold.

Subpart 803.6—[Reserved]

Subpart 803.7—[Reserved]

Subpart 803.8—[Reserved]

Subpart 803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions
(Added 5/16/2018)

803.1103 Procedures.

(a) By use of the contract clause at [52.203-16](#), Preventing Personal Conflicts of Interest, the contracting officer shall require each contractor whose employees perform acquisition functions closely associated with inherently governmental functions to obtain from each covered employee a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract. See [FAR 3.1103\(a\)\(2\)\(iii\)](#).

[Deviation per [Class Deviation](#) from VAAR parts 803, 819, 827, 847, and 849 Regarding Certified Mail Receipt Requested and Mail Requirements, dated September 28, 2020, provides an exception to certified mail receipt requested and mail requirements. This deviation expires once incorporated into the VAAR or is otherwise rescinded.]

Subpart 803.7—Voiding and Rescinding Contracts

803.705 Procedures.

(c) *Decision-making process.*

(1) The notice shall be sent by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

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(e) *Final agency decision.* The notice of the decision shall be sent promptly by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

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SUBCHAPTER A—GENERAL

PART 804—ADMINISTRATIVE AND INFORMATION MATTERS
(Revised 2/24/2023)

Subpart 804.1—[Reserved]

Subpart 804.13—Personal Identity Verification

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**Subpart 804.19—Basic Safeguarding of Covered Contractor
Information Systems**

804.1900-70 Scope of subpart.

804.1902 Applicability.

804.1970 Information security policy—contractor general responsibilities.

804.1903 Contract Clause.

AUTHORITY: 38 U.S.C. 5723-5724, 5725(a)–(c); 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

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Subpart 804.1—Reserved**Subpart 804.13—Personal Identity Verification****804.1303 Contract clause.**

The contracting officer shall insert the clause at [852.204-70](#), Personal Identity Verification of Contractor Personnel, in solicitations and contracts that require contractor employees to have routine access to a VA facility or to VA information systems. This clause is used in conjunction with FAR clause [52.204-9](#), Personal Identity Verification of Contractor Personnel.

Subpart 804.19—Basic Safeguarding of Covered Contractor Information Systems**804.1900-70 Scope of subpart.**

This subpart prescribes policies and procedures for information security and protection of VA information, information systems, and VA sensitive information, including sensitive personal information.

804.1902 Applicability.

This subpart applies to all VA acquisitions, including acquisitions of commercial products or commercial services other than commercially available off-the-shelf items, when a contractor's information system may contain VA information.

804.1970 Information security policy—contractor general responsibilities.

Contractors, subcontractors, business associates, and their employees who are users of VA information or information systems, or have access to VA information and VA sensitive information shall—

(a) Comply with all VA information security and privacy program policies, procedures, practices, and related contract requirements, specifications, and clauses, this includes complying with VA privacy and confidentiality laws and implementing VA and Veterans Health Administration (VHA) regulations (see [38 U.S.C. 5701](#), [5705](#), [5721-5728](#), and [7332](#); [38 CFR 1.460](#) through [1.496](#), [1.500](#) through [1.527](#), and [17.500](#) through [17.511](#)), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) ([Pub. L. 104-191](#)), and the Privacy Act of 1974 (as amended) ([5 U.S.C. 522a](#));

(b) Complete VA security awareness training on an annual basis;

Part 804—Administrative and Information Matters

(c) Complete VHA's Privacy and HIPAA Training on an annual basis when access to protected health information (PHI) is required;

(d) Report all actual or suspected security/privacy incidents and report the information to the contracting officer and contracting officer's representative (COR), as identified in the contract or as directed in the contract, within one hour of discovery or suspicion;

(e) Comply with VA policy as it relates to personnel security and suitability program requirements for background screening of both employees and non-employees who have access to VA information systems and data;

(f) Comply with directions that may be issued by the contracting officer or COR, or from the VA Assistant Secretary for Information and Technology or a designated representative through the contracting officer or COR, directing specific activities when a security/privacy incident occurs;

(g) Sign an acknowledgment that they have read, understand, and agree to abide by the VA Information Security Rules of Behavior (VA National Rules of Behavior) as required by [38 U.S.C. 5723](#), [FAR 39.105](#), and the clause at [852.204-71](#), Information and Information Systems Security, on an annual basis. The VA Information Security Rules of Behavior describe the responsibilities and expected behavior of contractors, subcontractors, business associates, and their employees who are users of VA information or information systems, information assets and resources, or have access to VA information;

(h) Maintain records and compliance reports regarding HIPAA Security and Privacy Rules (see [45 CFR part 160](#)) compliance in order to provide such information to VA upon request to ascertain whether the business associate is complying with all applicable provisions under both rules' regulatory requirements; and

(i) Flow down requirements in all subcontracts and Business Associate Agreements (BAAs), at any level, as provided in the clause at [852.204-71](#), Information and Information Systems Security.

804.1903 Contract clause.

When the clause at [FAR 52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems is required to be included in accordance with FAR 4.1903, the contracting officer shall insert the clause at [852.204-71](#), Information and Information Systems Security.

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PART 805—[RESERVED]

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SUBCHAPTER B—ACQUISITION PLANNING

PART 806—COMPETITION REQUIREMENTS

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806.004-70 Definition.

Subpart 806.1—Full and Open Competition

806.102 Use of competitive procedures.

Subpart 806.2—Full and Open Competition After Exclusion of Sources

806.203 Set-asides for small business concerns.

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Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for certified Veteran-owned small businesses.

806.302-571 Authorized or required by statute—VA unique authorities.

Subpart 806.5—Advocates for Competition

806.501 Requirement.

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 U.S.C. 3304; and 48 CFR 1.301 through 1.304.

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PART 806—COMPETITION REQUIREMENTS*(Revised 2/16/2023)***806.004-70 Definition.**

As used in this part—

Health-care resources has the same definition as that provided in [873.102](#).

Subpart 806.1—Full and Open Competition**806.102 Use of competitive procedures.**

(d)(3) Awards made using General Services Administration (GSA) or Department of Veterans Affairs (VA) Federal Supply Schedules (FSS) are considered competitive when awarded in accordance with the procedures specified in [FAR part 8](#) and this part.

Subpart 806.2—Full and Open Competition After Exclusion of Sources**806.203 Set-asides for small business concerns.**

(c) Subparts [819.5](#) and [819.70](#) prescribe the policies and procedures that shall be followed with respect to set-asides for small business and Veteran-owned small business concerns.

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

806.270 Set-asides for certified Veteran-owned small businesses. (DEVIATION)

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127-8128), contracting officers shall set aside solicitations in accordance with subpart [819.70](#) and the VA Rule of Two for certified service-disabled Veteran-owned small businesses (SDVOSBs) or certified Veteran-owned small businesses (VOSBs) (see [819.7005](#), [819.7006](#), and [819.7007](#)). (38 U.S.C. 8127-8128)

(b) The requirement in this section to set aside procurements for certified SDVOSBs and certified VOSBs applies to all types of contracts, including orders placed

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under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts. (38 U.S.C. 8127-8128)

Subpart 806.3—Other Than Full and Open Competition**806.302 Circumstances permitting other than full and open competition.****806.302-5 Authorized or required by statute.**

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

806.302-570 Noncompetitive procedures for certified Veteran-owned small businesses. (DEVIATION)

(a) *Sole source awards made to a certified SDVOSB or certified VOSB.* Full and open competition need not be provided for when awarding a sole source contract under paragraph (b) or (c) of this section, to a certified SDVOSB or certified VOSB in accordance with [819.7008](#) or [819.7009](#), respectively, as authorized. Contracts awarded using the authority in this paragraph (a) shall be supported by the applicable justification and approval requirements of [FAR 6.302-5\(c\)\(2\)\(ii\)](#), [6.303](#), and [6.304](#).

(b) *Sole source awards below the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under the authority in this paragraph (b) to a certified SDVOSB or certified VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) *Sole source awards above the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a certified SDVOSB or certified VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

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

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

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(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

806.302-571 Authorized or required by statute—VA unique authorities.

(a) *Authority.* (1) Citation: 41 U.S.C. 3304(a)(5). Contracting officers shall also cite the specific authorities in paragraph (b) of this section for the statutes related to the products and services procured.

(2) Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.

(b) *Application.* The following products and services are authorized to be acquired from a specified source:

(1) *Prosthetic appliances and services.* Contracting activities may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as determined to be proper, without regard to any other provision of law. (38 U.S.C. 8123)

(2) *Commercial health-care resources, the use of medical equipment or space, or research, and acquired from an institution affiliated with the Department of Veterans Affairs.* Contracting activities may procure health care resources, including resources from medical practice groups and other approved entities associated with affiliated institutions, blood banks, organ banks, or research centers from an institution affiliated with VA in accordance with 38 U.S.C. 7302. Acquisition of resources from medical practice groups and other entities shall be approved when determined by the contracting activity to be legally associated with affiliated institutions in accordance with 38 U.S.C. 7302. The justification and approval requirements of [FAR 6.303](#) and paragraph (c) of this section do not apply. (38 U.S.C. 8153(a)(3)(A))

(3) *Commercial health-care resources, the use of medical equipment or space, and is not to be acquired from an entity described in paragraph (b)(2) of this section.* Contracting activities may procure health care resources from a non-affiliated institution in accordance with the simplified procedures prescribed in [part 873](#). The justification and approval requirements of [FAR 6.303](#) shall apply. (38 U.S.C. 8153(a)(3)(B))

(4) *Commercial health-care resources, the use of medical equipment or space, when not acquired from an affiliated institution described in paragraph (b)(2) of this section and to be conducted on a sole source basis.* The authority in this paragraph (b)(4) applies if not acquired from an affiliated institution in accordance with [part 873](#). The justification and approval requirements of [FAR 6.303](#) shall apply. (38 U.S.C. 8153(a)(3)(C)-(D))

(c) *Written justifications and approvals.* Contracts awarded using an authority in this section, with the exception of acquisitions authorized under paragraph (b)(2) of this

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section, shall be supported by the written justifications and approvals described in FAR [6.303](#) and [6.304](#).

(d) *Citation of specific authorities.* When a contracting officer enters into a contract without providing full and open competition for any of the following items or services, the contracting officer must cite 41 U.S.C. 3304(a)(5) and the following authorities that apply, in the written justifications and approvals as required by [FAR 6.303](#) and [6.304](#):

(1) *Contracts for scarce medical specialist services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7409.) Contracting officers may enter into contracts with:

(i) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing;

(ii) Clinics; and

(iii) Any other group or individual capable of furnishing such scarce medical specialist services at VA facilities, to include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel. (38 U.S.C. 7409)

(2) *Contracts or agreements to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 7802(f).) Contracts or agreements may be entered into without regard to 41 U.S.C. 6101(b) through (d).

(3) *Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b).* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8109(f).) Contracts or leases may be entered into provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee.

(4) *Contracts for laundry and other common services, such as the purchase of steam, negotiated with non-profit, tax-exempt educational, medical, or community institutions.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8122(c).) Contracts may be entered into when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources.

(5) *Contracts or agreements with private or public agencies or persons for translator services.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 513.)

Subpart 806.5—Advocates for Competition

806.501 Requirement.

The Associate Executive Director, Office of Procurement Policy, Systems and Oversight (AED, PPSO) is designated as the VA Advocate for Competition for the

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agency. The AED, PPSO may further delegate the authority in this section to appoint an alternate agency advocate for competition and shall designate procuring activity advocates for competition in accordance with [FAR 6.501](#). A complete list of VA procuring activity advocates for competition can be found at <https://www.va.gov/oal/business/pps/competition-advocates.asp>.

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SUBCHAPTER B—ACQUISITION PLANNING

PART 807—[RESERVED]

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SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

808.000	Scope of part.
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808.001-70	Definitions.
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Subpart 808.4—Federal Supply Schedules

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808.470	Ordering Officers.

Subpart 808.6—Acquisition from Federal Prison Industries, Inc.

808.603	Purchase priorities.
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Subpart 808.8—[Reserved]

Authority: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

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PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES*(Revised 2/16/23)***808.000 Scope of part.**

This part deals with prioritizing sources of supplies and services for use by the Government based on unique VA statutory programs, as well as requirements when using the General Services Administration (GSA) Federal Supply Schedules program including the GSA delegated VA Federal Supply Schedule program.

808.001 General.**808.001-70 Definitions.**

As used in this part—

Veterans Affairs (VA) Federal Supply Schedule (FSS) or “VA FSS” means FSS contracts awarded by the VA National Acquisition Center, under authority delegated by the General Services Administration (GSA) per [FAR 8.402\(a\)](#). VA FSS contracts include medical, dental, pharmacy and veterinary equipment and supplies in Federal Supply Classification (FSC) Group 65, instruments and laboratory equipment in FSC Group 66 and health care services in FSC Group 621.

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

808.002 Priorities for use of mandatory Government sources. (DEVIATION)

(a) *Priorities*. Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed in paragraphs (a)(1) and (2) of this section in descending order of priority:

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

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

(iii) Federal Prison Industries, Inc. (see [808.603](#)). Prior to considering award of a contract to Federal Prison Industries, Inc., contracting officers shall apply the VA Rule of Two (see [802.101](#)) to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart [819.70](#). If an award is not made to a certified service-disabled veteran-owned small business (SDVOSB)/certified veteran-owned small business (VOSB) listed in the SBA certification database as provided in subpart [819.70](#), FPI remains a mandatory source in accordance with [FAR 8.002](#).

(iv) Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program ([FAR subpart 8.7](#)). Supplies that are on the Procurement List but which do not meet the definition of a covered product in paragraph (a)(1)(iv)(A) of this section are only required to be procured from a mandatory source in accordance with [FAR 8.002](#) if an award is not made to a certified SDVOSB/certified VOSB listed in the SBA certification database after following the procedures set forth in subpart [819.70](#).

(A) *Definition.* As used in this paragraph (a)(1)(iv), *covered product* means a product that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see [FAR 8.703](#)) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(a)(1)(iv); (i) Is a replacement for a product under this paragraph

(ii) Is essentially the same and meeting the same requirement as the product being replaced; and

(iii) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) *Policy.* Except as provided in paragraphs (a)(1)(iv)(C) and (D) of this section, contracting officers shall procure covered products that are on the Procurement List through the AbilityOne Program as set forth in [FAR subpart 8.7](#). Contracting officers shall not procure products that are on the Procurement List, but which do not meet the definition of a covered product using the procedures set forth in [FAR subpart 8.7](#), unless award cannot be made to a certified SDVOSB/VOSB listed in the SBA certification database pursuant to the procedures set forth in subpart [819.70](#).

(C) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart [819.70](#).* If a contract for a covered product awarded under the authority of 38 U.S.C. 8127(d)(1) to an eligible SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with [819.7006](#) and [819.7007](#).

(D) *Termination or expiration of excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(1)(iv)(C) of this section is terminated or expires, contracting officers shall procure such covered product through the AbilityOne Program as a priority mandatory Government source (see paragraph (a)(1)(iv)(B) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more certified SDVOSBs/VOSBs will submit offers;
and

(2) Award can be made at a fair and reasonable price that offers best value to the United States.

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points.

(2) *Services.* Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program ([FAR subpart 8.7](#)). For services that are on the Procurement List, but which do not meet the definition of a covered service in paragraph (a)(2)(i) of this section are only required to be procured from a mandatory source in accordance with [FAR 8.002](#) if an award is not made to a certified SDVOSB/VOSB listed in the SBA certification database after following the procedures set forth in subpart [819.70](#).

(i) *Definition.* As used in this paragraph (a)(2)—

Covered service means a service that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see [FAR 8.703](#)) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(i) Is a replacement for a service under this paragraph (a)(2);

(ii) Is essentially the same and meeting the same requirement as the service being replaced; and

(iii) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Except as provided in paragraphs (a)(2)(iii) and (iv) of this section, contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in [FAR subpart 8.7](#). Contracting officers shall not procure services that are on the Procurement List, but which do not meet the definition of a covered service using the procedures set forth in [FAR subpart 8.7](#), unless award cannot be made to a certified SDVOSB/VOSB listed in the SBA certification database pursuant to the procedures set forth in subpart [819.70](#).

(iii) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart [819.70](#).* If a contract for a covered service awarded under the authority of 38 U.S.C. 8127(d)(1) to an eligible SDVOSB or VOSB listed in the SBA certification database was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with [819.7006](#) and [819.7007](#).

(iv) *Termination or expiration of certain excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(2)(iii) of this section is terminated or expires, contracting officers shall procure such covered service through the AbilityOne Program as a priority mandatory Government source (see paragraph (a)(2)(ii) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(A) Two or more certified SDVOSBs/VOSBs will submit offers; and

(B) Award can be made at a fair and reasonable price that offers best value to the United States.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see [FAR 6.302-2](#), [8.405-6](#), and [13.106-1](#) and part [806](#) for justification requirements).

808.004 Use of other sources.

808.004-70 Use of other priority sources. (DEVIATION)

(a) *Veterans contracting priority.* In order to fulfill the requirements of 38 U.S.C. 8127-8128 (see subpart [819.70](#)), contracting officers shall award contracts (see [FAR 2.101](#) for the definition of contracts), as well as Blanket Purchase Agreements

(BPAs), and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts to certified SDVOSBs first, then certified VOSBs, listed in the SBA certification database.

(b) *Strategic sourcing priorities and application of the VA Rule of Two.* To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (e.g., prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two (see [802.101](#)), they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles.

Subpart 808.4—Federal Supply Schedules

808.402 General.

(a) GSA has delegated authority to the VA to procure medical equipment, supplies, services and pharmaceuticals under the VA Federal Supply Schedule (FSS) program. The VA FSS program includes medical supplies in Federal Supply Classification (FSC) Groups 65 and 66 and services in FSC 621 for Professional and Allied Healthcare Staffing Services and Medical Laboratory Testing and Analysis Services.

808.404 Use of Federal Supply Schedules.

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

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

(b) Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart [819.70](#). Specifically, the contracting officer will consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities will be followed by preferences for other small businesses in accordance with [819.7005](#).

(c) If unable to satisfy requirements for supplies and services from the mandatory sources in [808.002](#) and [808.004-70](#), contracting officers may consider commercial sources in the open market (see [FAR 8.004\(b\)](#)) if an open market acquisition is most appropriate (see [FAR 8.004](#)) and a VA Rule of Two (see [802.101](#)) determination is made (see subpart [819.70](#)).

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

808.405 Ordering procedures for Federal Supply Schedules.

808.405-70 Set-aside procedures for VA and GSA Federal Supply Schedules. (DEVIATION)

(a) *When market research supports set-asides.* Pursuant to 38 U.S.C. 8127, contracting activities shall set-aside BPAs and orders for certified SDVOSBs or VOSBs listed in the SBA certification database when, based on research, the contracting officer has a reasonable expectation that two or more certified small business concerns owned and controlled by Veterans or owned and controlled by Veterans with service-connected disabilities will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. When the VA Rule of Two (see [802.101](#)) is met:

(1) The set-aside requirements as provided in [819.7006](#) and [819.7007](#) are mandatory.

(2) The requirements in [FAR 8.405-1](#), [8.405-2](#), and [8.405-3](#) apply, except only quotes received from certified and eligible SDVOSBs or VOSBs will be considered.

(3) The eligibility requirements of [819.7003](#), [819.7006](#), and [819.7007](#) apply, including the requirement for offerors to be listed in the SBA certification database at the time they submit offers/quotes as well as at the time awards are made.

(4) The contracting officer shall notify potential offerors of the unique VA verification requirements by including in the solicitation the applicable set-aside clause prescribed at [819.7011](#).

(b) *When market research does not support set-asides.* Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside in either FSS or the open market, the contracting activity shall give priority in the award of orders placed under this part to certified SDVOSBs/VOSBs listed in the SBA certification database through the use of evaluation preferences giving priority to certified SDVOSBs first, then to a lesser extent VOSBs, and finally to any firm that proposes to use SDVOSBs/VOSBs as subcontractors. Contracting officers must use the clause prescribed in [808.405-570\(b\)](#).

(c) *SDVOSB/VOSB eligibility requirements.* The SDVOSB and VOSB eligibility requirements in [819.7003](#) apply, including being a currently certified SDVOSB or listed in the SBA certification database status at the time of submission of offer/quote and at the time of award. The offeror must also represent that it meets

the small business size standard for the assigned North American Industry Classification System (NAICS) code as well as other small business requirements (including completing the applicable subcontracting limitations certificate of compliance found in [852.219-75](#) or [852.219-76](#)).

808.405-570 Small business set-asides and preferences—Veterans First Contracting Program clauses.

(a) When setting aside an order pursuant to [808.405-70\(a\)](#), the applicable clause prescribed in [819.7011](#) for SDVOSB/VOSB set-asides shall be used.

(b) When an SDVOSB/VOSB set-aside is not feasible, the ordering activity shall use the clause at [852.208-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, for task orders, delivery orders, or BPAs using evaluation factors other than price alone.

(c) The ordering activity shall insert the clause at [852.208-71](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders or BPAs, in request for quotes and resulting orders that include clause [852.208-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

808.470 Ordering Officers.

In accordance with [801.601](#), when authorized, ordering officers may place orders for supplies and services against agreements or task or delivery orders established by a contracting officer against Federal Supply Schedules within the ordering limits identified in the contract or agreement or the specific ordering guide when funding is available. Ordering officers shall only place orders against the order or agreement if it is awarded to a single awardee. The contracting officer that awarded the Blanket Purchase Agreements (BPA) or order will provide the contractor a list of authorized ordering officers. Any modifications to the agreement or order must be performed by a contracting officer.

Subpart 808.6—Acquisition from Federal Prison Industries, Inc.

808.603 Purchase priorities.

A waiver from Federal Prison Industries is not needed when comparable supplies and services are procured in accordance with subpart [819.70](#).

Subpart 808.8 [Reserved]

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SUBCHAPTER B—ACQUISITION PLANNING

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1—Responsible Prospective Contractors

Sec.

- 809.106 Pre-award surveys.
- 809.106-1 Conditions for pre-award surveys.

Subpart 809.2—[Reserved]

Subpart 809.4—Debarment, Suspension, and Ineligibility

- 809.400 Scope of subpart.
- 809.402 Policy.
- 809.403 Definitions.
- 809.405 Effect of listing.
- 809.405-1 Continuation of current contracts.
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- 809.406 Debarment.
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- 809.406-2 Causes for debarment.
- 809.406-270 Additional causes for debarment.
- 809.406-3 Procedures.
- 809.406-4 Period of debarment.
- 809.407 Suspension.
- 809.407-1 General.
- 809.407-3 Procedures
- 809.470 Fact-finding procedures.

Subpart 809.5—Organizational and Consultant Conflicts of Interest

- 809.507 Solicitation provisions and contract clause.
- 809.507-1 Solicitation provisions.

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

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SUBCHAPTER B—ACQUISITION PLANNING

PART 809—CONTRACTOR QUALIFICATIONS

Subpart 809.1—Responsible Prospective Contractors

809.106 Pre-award surveys.

809.106-1 Conditions for pre-award surveys.

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

- (1) Bakeries.
- (2) Dairies.
- (3) Ice cream plants.
- (4) Laundry and dry cleaning activities.

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

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

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

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

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

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

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

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

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

Subpart 809.2—[Reserved]

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

This subpart implements [FAR subpart 9.4](#) and prescribes VA's procedures and related actions for the suspension and debarment of contractors.

809.402 Policy.

(b) Statutory debarments pursuant to the authority of 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, are mandatory when the determination is made that a business concern has willfully and intentionally misrepresented its status as a service-disabled, veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB).

809.403 Definitions.

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

Suspending and Debarring Official (SDO) means the individual responsible for final decisions regarding suspension and debarment, as appointed by the agency.

809.405 Effect of listing.

The authority under [FAR 9.405\(a\)](#), [9.405\(d\)\(2\)](#), and [9.405\(d\)\(3\)](#) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors with active exclusions in the System for Award Management (SAM) is delegated to the Suspending and Debaring Official (SDO). This authority is further delegated to the HCAs, who may delegate this authority, in writing, to a designee.

809.405-1 Continuation of current contracts.

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

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

809.405-2 Restrictions on subcontracting.

Authority to make the written determination required under [FAR 9.405-2](#) consenting to a contractor's use of a subcontractor who is suspended, proposed for debarment, or debarred is delegated to the SDO. This authority is further delegated to the HCA, who may delegate this authority, in writing, to a designee.

809.406 Debarment.**809.406-1 General.**

(a) For the purposes of [FAR 9.406-1](#), the SDO's authority includes debarments pursuant to the Federal Management Regulation at 41 CFR 102-117.295. In addition to the factors listed in [FAR 9.406-1](#), the SDO may consider the following examples before arriving at a debarment decision:

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

(2) Whether the contractor conducted periodic reviews of company business

practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting.

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

809.406-2 Causes for debarment.

809.406-270 Additional causes for debarment.

(a) Discretionary Causes. (1) In addition to the causes listed in [FAR 9.406-2 \(a\)](#) through (c), the SDO may debar contractors, based upon a preponderance of the evidence (as defined at [FAR 2.101](#)), for the Government's protection, for—

(i) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under [subpart 819.70](#); or

(ii) Failure to observe the material provisions of a voluntary exclusion or an administrative agreement.

(2) The period of debarment shall be commensurate with the seriousness of the action.

(b) Statutory Cause. (1) Pursuant to 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, the SDO shall debar, from contracting with VA, for a period of not less than five years, any business concern that has willfully and intentionally misrepresented the status of that concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans.

(2) Debarment of a business concern pursuant to 38 U.S.C. 8127(g) shall include the debarment of all principals in the business concern. Debarment shall be for a period of not less than five years.

(3) "Willful and intentional" misrepresentations, for the purpose of debarment actions taken pursuant to 38 U.S.C. 8127(g), are defined as deliberate misrepresentations concerning the status of the concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans as supported by the preponderance of evidence. Examples of a preponderance of evidence for deliberate misrepresentation of SDVOSB and/or VOSB status include but are not limited to: Criminal convictions, plea agreements, deferred prosecution agreements, Board of Contract Appeals decisions, and admissions of guilt must be supported by a preponderance of evidence. Examples of a preponderance of evidence for deliberate misrepresentation of SDVOSB and/or

VOSB status include but are not limited to: criminal convictions, plea agreements, deferred prosecution agreements, Board of Contract Appeals decisions, and admissions of guilt.

809.406-3 Procedures.

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

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

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

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

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

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

(g) If the S&D Committee finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil

judgment, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall refer the dispute to a designee for a resolution pursuant to [809.470](#), Fact-finding procedures. The S&D Committee shall provide the contractor or individual the disputed material fact(s). Decisions and determinations of VA's Center for Verification and Evaluation (CVE) or Office of Small and Disadvantaged Business Utilization (OSDBU), such as status protest decisions, and size determinations of the SBA shall not be subject to dispute or fact-finding in proposed debarment actions. The S&D Committee and SDO shall accept these decisions and determinations as resolved facts.

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

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

(j) In actions processed under [809.406-270\(b\)](#), the SDO notifies the individuals and/or contractors of the determination of willful and intentional misrepresentation in the notice of proposed debarment. VA shall issue the final decision, removing or upholding the determination, within 90 days after SDO's determination of willful and intentional misrepresentation.

809.406-4 Period of debarment.

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

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

(1) VA has debarred the contractor; and

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

(c) The period of debarment for willful and intentional misrepresentations of SDVOSB or VOSB status pursuant to [809.406-270\(b\)](#) shall not be less than 5 years.

809.407 Suspension.

809.407-1 General.

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

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

809.407-3 Procedures.

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

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

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

(d) If VA receives a reply from the contractor within 30 days after receipt of the notice of suspension, the S&D Committee shall consider the information in the reply before the Committee makes further recommendations to the SDO. The S&D Committee, upon the request of a suspended contractor, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument personally or through a representative. The contractor may supplement the oral presentation with written information and argument. The

proceeding will be conducted in an informal manner and without requirement for a transcript.

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

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

809.470 Fact-finding procedures.

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

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

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

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

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

Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.507 Solicitation provisions and contract clause.

809.507-1 Solicitation provisions.

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

(b) The provision at [852.209-70](#), Organizational Conflicts of Interest, must be included in any solicitation for the services addressed in [FAR 9.502](#).

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SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 810—MARKET RESEARCH

Sec.

810.000	Scope of part.
810.001	Policy.
810.001-70	Market research policy—use of SBA certification database.

Authority: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

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PART 810—MARKET RESEARCH**810.000 Scope of part.**

The Veterans First Contracting Program in subpart [819.70](#) applies to contract actions under this part and takes precedence over other small business programs referenced in [FAR part 10](#) and [FAR part 19](#).

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

810.001 Policy.**810.001-70 Market research policy—use of SBA certification database. (DEVIATION)**

When performing market research, contracting officers shall—

(a) Review the Small Business Administration (SBA) certification database on the SBA Veteran Small Business Certification Program (VetCert) portal at <https://veterans.certify.sba.gov/> as required by subpart [819.70](#).

(b) Search the SBA certification database by applicable North American Industry Classification System (NAICS) codes to determine whether two or more certified service-disabled veteran-owned small businesses (SDVOSBs) and/or veteran-owned small businesses (VOSBs), with the appropriate NAICS code, are listed in the database.

(c) Determine, among other things as the requirement dictates, whether certified SDVOSBs or certified VOSBs listed in the SBA certification database, and identified as a result of market research—

(1) Are capable of performing the work;

(2) Are likely to submit an offer/quote; and

(3) Whether an award can be made at a fair and reasonable price that offers best value to the Government.

Part 810—Market Research

(d) The contracting officer shall use the market research for acquisition planning purposes, and as set forth in subpart [819.70](#), conduct a VA Rule of Two (see 802.101) determination in accordance with the contracting order of priority (see [819.7005](#) and [819.7006](#)).

SUBCHAPTER B—ACQUISITION PLANNING

PART 811—DESCRIBING AGENCY NEEDS

(Revised 2/24/2023)

Subpart 811.1—Selecting and Developing Requirements Documents

Sec.

811.107-70 Contract clause.

Subpart 811.2—Using and Maintaining Requirements Documents

811.204-70 Contract clause.

Subpart 811.4—[RESERVED]

Subpart 811.5—Liquidated Damages

811.500 Scope.

811.501-70 Policy—statutory requirement.

811.503-70 Contract clause.

Subpart 811.6—[RESERVED]

AUTHORITY: 38 U.S.C. 5723-5724, 5725(a)–(c); 40 U.S.C. 121(c); 41 U.S.C. 1303, 1702; and 48 CFR 1.301 through 1.304.

Part 811—Describing Agency Needs

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Subpart 811.1—Selecting and Developing Requirements Documents**811.107-70 Contract clause.**

The contracting officer shall insert the clause at [852.211-70](#), Equipment Operation and Maintenance Manuals, in solicitations and contracts for technical medical equipment, and other technical and mechanical equipment and devices where the requiring activity determines manuals are a necessary requirement for operation and maintenance of the equipment.

Subpart 811.2—Using and Maintaining Requirements Documents**811.204-70 Contract clause.**

The contracting officer shall insert the clause at [852.211-72](#), Technical Industry Standards, in solicitations and contracts requiring conformance to technical industry standards, federal specifications, standards and commercial item descriptions unless comparable coverage is included in the item specification.

Subpart 811.4—[RESERVED]**Subpart 811.5—Liquidated Damages****811.500 Scope.**

This subpart prescribes policies and procedures for using a liquidated damages clause in solicitations and contracts that involve VA sensitive personal information. This also pertains to any solicitations and contracts involving VA sensitive personal information issued by another agency for or on behalf of VA through an interagency acquisition in accordance with FAR subpart [17.5](#) and subpart [817.5](#).

811.501-70 Policy—statutory requirement.

(a) Contracting officers are required to include a liquidated damages clause in contracts for the performance of any Department function which requires access to VA sensitive personal information (see the definition in [802.101](#)), in accordance with [38 U.S.C. 5725\(b\)](#). The liquidated damages are to be paid by the contractor to the Department of Veterans Affairs in the event of a data breach involving sensitive personal information maintained, processed, or utilized by contractors or any subcontractors.

(b) The purpose of the liquidated damages to be paid for by the contractor in the event of a data breach of personal sensitive information is for VA to provide credit

Part 811—Describing Agency Needs

protection services to affected individuals pursuant to [38 U.S.C. 5724\(a\)-\(b\)](#).

811.503-70 Contract clause.

(a) Insert the clause at [852.211-76](#), Liquidated Damages—Reimbursement for Data Breach Costs, in all solicitations, contracts, or orders, where VA requires access to sensitive personal information for the performance of a Department function where—

(1) Sensitive personal information (see the definition in [802.101](#)) will be created, received, maintained, or transmitted, or that will be stored, generated, accessed, or exchanged such as protected health information (PHI) or utilized by a contractor, subcontractor, business associate, or an employee of one of these entities; or,

(2) When VA information systems will be designed or developed at non-VA facilities where such sensitive personal information is required to be created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized.

(b) Insert the clause at [852.211-76](#) with its Alternate I in all solicitations, contracts, or orders, for commercial products or commercial services acquisitions awarded under the procedures of FAR part [8](#) or [12](#).

(c) Insert the clause at [852.211-76](#) with its Alternate II, in all solicitations, contracts, or orders, in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial products or commercial services awarded under the procedures of FAR part [13](#) (see FAR [13.302-5\(d\)\(1\)](#)) and the clause at FAR [52.213-4](#).

Subpart 811.6—[RESERVED]

SUBCHAPTER B—ACQUISITION PLANNING

**PART 812—ACQUISITION OF COMMERCIAL PRODUCTS AND
COMMERCIAL SERVICES**

(Revised 2/24/2023)

**Subpart 812.1—Acquisition of Commercial Products and
Commercial Services—General**

Sec.

- 812.102 Applicability.
812.102-70 Applicability of Veterans preferences.

**Subpart 812.3—Solicitation Provisions and Contract Clauses for the
Acquisition of Commercial Products and Commercial Services**

- 812.301 Solicitation provisions and contract clauses for the acquisition of
commercial products and commercial services.

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

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Subpart 812.1—Acquisition of Commercial Items – General**812.102 Applicability.****812.102-70 Applicability of Veterans preferences.**

Based on the authority under 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program in subpart [819.70](#) applies to VA contracts under this part. The provisions and clauses prescribed reflect agency unique statutes applicable to the acquisition of commercial items.

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**812.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

(f)(1) Contracting officers shall insert the clause [852.212-71](#), Gray Market and Counterfeit Items, in solicitations and contracts for new medical supplies, new medical equipment, new information technology equipment, and maintenance of medical or information technology equipment that includes replacement parts if used, refurbished, or remanufactured parts are unacceptable, when the associated solicitation includes FAR provisions [52.212-1](#) Instruction to Offerors-Commercial Products and Commercial Services, and [52.212-2](#), Evaluation-Commercial Products and Commercial Services.

(2) Contracting officers shall insert the clause [852.212-72](#), Gray Market and Counterfeit Items – Information Technology (IT) Maintenance Allowing Other-than-New Parts, in solicitations and contracts for the maintenance of information technology equipment that includes replacement parts, if used, refurbished, or remanufactured parts are acceptable, when the associated solicitation includes FAR provisions [52.212-1](#), Instruction to Offerors-Commercial Products and Commercial Services, and [52.212-2](#), Evaluation-Commercial Products and Commercial Services.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

(Revised 2/16/23)

Sec.

813.003-70 General policy.

Subpart 813.1—Procedures

813.102 Source list.

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

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

Subpart 813.2—Reserved

Subpart 813.3—Simplified Acquisition Methods

813.305-70 VA's imprest funds and third party drafts policy.

AUTHORITY: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41. U.S.C. 1702 and 48 CFR 1.301 through 1.304.

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PART 813—SIMPLIFIED ACQUISITION PROCEDURES

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

813.003-70 General policy. (DEVIATION)

(a) The Veterans First Contracting Program in subpart [819.70](#) applies to VA contracts, orders and BPAs under this part and has precedence over other small business programs referenced in FAR parts [13](#) and [19](#). For VA policy regarding mandatory Government sources, refer to [808.002](#).

(b) Notwithstanding FAR [13.003\(b\)\(2\)](#), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart [819.70](#). Specifically, the contracting officer shall consider preferences for certified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for certified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with [819.7005](#).

(c) When using competitive procedures, the preference for restricting competition to certified SDVOSBs/VOSBs in accordance with paragraph (b) of this section is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and certified firms, and that an award can be made at a fair and reasonable price that offers best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs/VOSBs, in accordance with [819.7006](#) or [819.7007](#) when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at [819.7011](#).

(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at [815.304-70](#) and the evaluation criteria clause prescribed at [815.304-71\(a\)](#).

Part 813—Simplified Acquisition Procedures

(d) The SDVOSB and VOSB eligibility requirements in [819.7003](#) apply, including being listed in the SBA certification database (see 13 CFR part 128), and other small business requirements in 13 CFR part 121, and 13 CFR 125.6 (e.g., small business representation, nonmanufacturer rule, and subcontracting limitations certificate of compliance (see [819.7004](#) and [819.7011](#))).

Subpart 813.1—Procedures**813.102 Source list. (DEVIATION)**

(a) Pursuant to [819.7003](#), contracting officers shall use the Small Business Administration (SBA) certification database to verify SDVOSB/VOSB status.

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

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

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

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

(b) Pursuant to 38 U.S.C 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a certified SDVOSB or VOSB for procurements below the simplified acquisition threshold, as authorized by FAR [6.302-5](#) and [806.302-570\(a\) and \(b\)](#).

(c) For procurements above the simplified acquisition threshold, pursuant to 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a certified SDVOSB/VOSB using procedures other than competitive procedures, as authorized by FAR [6.302-5](#) and [806.302-570\(a\) and \(c\)](#), and in accordance with [819.7008](#) and [819.7009](#).

Subpart 813.2—[Reserved]

Subpart 813.3—Simplified Acquisition Methods

813.305-70 VA's imprest funds and third party drafts policy.

VA's Governmentwide commercial purchase card and/or convenience checks shall be used in lieu of imprest funds and third party drafts.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 814—SEALED BIDDING

Subpart 814.1—[Reserved]

Subpart 814.2—Solicitation of Bids

Sec.

814.201	Preparation of invitations for bids.
814.201-2	Part I—The Schedule.
814.201-6	Solicitation provisions.
814.202	General rules for solicitation of bids.
814.202-4	Bid samples.

Subpart 814.3—Submission of Bids

814.304	Submission, modification, and withdrawal of bids.
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Subpart 814.4—[Reserved]

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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PART 814—USE OF SEALED BIDDING**Subpart 814.1—[Reserved]****Subpart 814.2—Solicitation of Bids**
*(Revised 5/16/2018)***814.201 Preparation of invitations for bids.****814.201-2 Part I—The Schedule.***(b) Section B, Supplies or services and prices.*

(1) When the contracting officer determines that it will be to the Government's advantage to make an award on the basis of a summary bid, the IFB shall include the following statement in Part I—The Schedule, Section B:

“The award will be made on either the bid price for individual items or the summary bid price for all items, whichever results in the lowest price to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.”

(2) When a contracting officer determines that it will be to the Government's advantage to make an award by group or groups of items, the IFB shall include the following statement in Part I—The Schedule, Section B:

“Award shall be made on the basis of the bid price for each identified group of items. The individual price of each line item in the group does not have to be the lowest bid received for that item.”

This may apply when the items in the group or groups are readily available from sources to be solicited; and one of the following applies—

(i) Furniture or fixtures are required for a single project and uniformity of design is desirable.

(ii) The articles required will be assembled and used as a unit.

814.201-6 Solicitation provisions.

(a) In an invitation for bid for supplies, equipment, or services (other than construction), the contracting officer shall define the extent to which VA will authorize and consider alternate bids.

Part 814—Sealed Bidding

(1) The contracting officer shall include the provision at [852.214-71](#), Restrictions on Alternate Item(s), in the invitation when VA will consider an alternate item only where acceptable bids on a desired item are not received or the bids do not satisfy the total requirement. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)

(2) The contracting officer shall include the provision at [852.214-72](#), Alternate Item(s), in the invitation when VA will consider an alternate item on an equal basis with the item specified. (For construction projects, VA will consider for acceptance an alternate specified only as a part of the basic item.)

(3) In addition to either of the provisions referenced in paragraphs (b)(1) or (2) of this section, the contracting officer shall include the provision at [852.214-73](#), Alternate Packaging and Packing, in the invitation when bids will be allowed based on different packaging, unit designation, etc.

(b) The contracting officer shall include the provision at [852.214-74](#), Marking of Bid Samples, in the invitation, along with the provision at [FAR 52.214-20](#), Bid Samples, when the contracting officer determines that samples are necessary to the proper awarding of a contract.

814.202 General rules for solicitation of bids.**814.202-4 Bid samples.**

(a) *Policy.* When bid samples are required, the contracting officer shall include a notice in the contract Schedule that requires bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(g) *Handling bid samples.*

(1) Samples from successful bids shall be retained for the period of contract performance.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term in accordance with the bidder's instructions.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of in accordance with the bidder's instructions.

Subpart 814.3—Submission of Bids

(Revised 5/16/2018)

814.304 Submission, modification, and withdrawal of bids.

(f) A notification to late bidders shall specify the final date by which VA must receive evidence of timeliness. This date shall be within five calendar days of the date an electronic notice is sent to the bidder, or within ten calendar days of receipt by the bidder of a notice sent by other than electronic means.

Subpart 814.4—[Reserved]

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 815—CONTRACTING BY NEGOTIATION

(Revised 10/4/2019)

Subpart 815.1 – Source Selection Processes and Techniques (Deviation)

Sec.

- 815.101 Best value continuum. (DEVIATION)
- 815.101-3 Tiered evaluation of small business offers. (DEVIATION)
- 815.101-370 Tiered set-aside evaluation. (DEVIATION)]

Subpart 815.3 – Source Selection

- 815.304-70 Evaluations factor commitments.
- 815.304-71 Solicitation provision and clause.
- 815.370 Only one offer.
- 815.370-1 Policy.
- 815.370-2 Promote competition.
- 815.370-3 Fair and reasonable price.
- 815.370-4 Exceptions.
- 815.370-5 Solicitation provision.

Subpart 815.4—[Reserved.]

Subpart 815.6—[Reserved.]

AUTHORITY: 38 U.S.C. 8127 and 8128; 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 C—CONTRACTING METHODS AND CONTRACT TYPES

PART 815—CONTRACTING BY NEGOTIATION

[Deviation per [Class Deviation](#) to VAAR 815.101-370 and 819.7010, Tiered Set-Aside Evaluation, dated July 28, 2023, to move the coverage at 819.7010, Tiered set-aside Evaluation, to 815.101-370, Tiered set-aside evaluation. This deviation expires when incorporated into the VAAR or is otherwise rescinded.

SUBPART 815.1 – Source Selection Processes and Techniques (DEVIATION)

815.101 Best value continuum. (DEVIATION)

815.101-3 Tiered evaluation of small business offers.(DEVIATION)

815.101-370 Tiered set-aside evaluation. (DEVIATION)

(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set-aside evaluation approach to minimize delays in the re-solicitation process.

(b) Tiered evaluation of offers is a procedure that may be used in competitive acquisitions when the VA Rule of Two determination indicates a set-aside is required in accordance with VAAR 802.101. Tiered evaluations can minimize delays associated with cancelation and resolicitation in the event that offers received by SDVOSB and VOSB are not acceptable. The contracting officer—

(1) Solicits and receives offers from targeted tiers of small business groups, with SDVOSB as the first tier and VOSB as the second tier;

(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

(c) Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation—

(1) Tiered evaluations limited to certified SDVOSBs and VOSBs;

(2) Tiered evaluations including all other small business concerns; or

Part 815—Contracting by Negotiation

(3) Tiered evaluations including other than small business concerns.

(d) The tiered order of priority shall be consistent with [VAAR 819.7005](#). Consideration shall be given to HUBZone, 8(a), and women-owned small business concerns before evaluating offers from other small business concerns in accordance with [VAAR 819.7005\(b\)\(4\)](#).]

Subpart 815.3 – Source Selection

815.304-70 Evaluation factor commitments.

Contracting officers shall—

(a) Include the clause at [852.215-70](#), Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Evaluation Factors, in negotiated solicitations and contracts giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(b) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in making an award determination; and

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

815.304-71 Solicitation provision and clause.

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

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

815.370 Only one offer.

815.370-1 Policy.

It is VA policy, if only one offer is received in response to a competitive solicitation, to—

(a) Take action to promote competition (see [815.370-2](#)); and

(b) Ensure that the price is fair and reasonable (see [815.370-3](#)) and comply with

Part 815—Contracting by Negotiation

the statutory requirement for certified cost or pricing data (see [FAR 15.403-4](#)).

815.370-2 Promote competition.

Except as provided in [815.370-4](#), if only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer should—

(a) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see [FAR 6.502\(b\)](#) and [11.002](#)); and

(b) Consider re-soliciting, allowing an additional period of at least 30 days for receipt of proposals.

815.370-3 Fair and reasonable price.

(a) If there was “reasonable expectation that two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see [FAR 15.403-1\(c\)\(1\)\(ii\)](#)).

(b) Except as provided in section [815.370-4\(a\)](#), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with [815.370-4\(a\)\(3\)](#)), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see [FAR 15.403-1\(c\)](#) and [15.403-4](#)). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at [FAR 15.403-4](#). For acquisitions that exceed the cost or pricing data threshold, if no exception at [FAR 15.403-1\(b\)](#) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

815.370-4 Exceptions.

(a) The requirements at sections [815.370-2](#) do not apply to—

Part 815—Contracting by Negotiation

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of emergency operations, or to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; or to support response to an emergency or major disaster;

(3) Small business set-asides under [FAR subpart 19.5](#), set asides offered and accepted into the 8(a) Program under [FAR subpart 19.8](#), or set-asides under the HUBZone Program (see [FAR 19.1305\(c\)](#)), the VA Small Business Program (see VAAR 819), or the Women-Owned Small Business Program (see [FAR 19.1505\(d\)](#));

(4) Acquisitions of basic or applied research or development, as specified in [FAR 35.016\(a\)](#), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see [FAR 36.601-2](#)).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to ensure adequate time for competition is allotted or that the price is fair and reasonable.

815.370-5 Solicitation provision.

Use the provision at [852.215-72](#), Notice of Intent to Re-solicit, in competitive solicitations, including solicitations using [FAR part 12](#) procedures for the acquisition of commercial items that will be solicited for fewer than 30 days, unless an exception at [815.370-4](#) applies.

Subpart 815.4—[Reserved.]

Subpart 815.6—[Reserved.]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 816—TYPES OF CONTRACTS

Subpart 816.1—[Reserved]

Subpart 816.2—Fixed-Price Contracts

Sec.

816.203

Fixed-price contracts with economic price adjustment.

816.203-4

Contract clauses.

Subpart 816.5—Indefinite-Delivery Contracts

816.505

Ordering.

816.506-70

Requirements—supplement for mortuary services.

816.570

Ordering Officers.

Subpart 816.7—Agreements

816.770

Consignment agreements.

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 F—SPECIAL CATEGORIES OF CONTRACTING**PART 816—TYPES OF CONTRACTS****Subpart 816.1—[Reserved]****Subpart 816.2 – Fixed-Price Contracts***(Added 3/23/2018)***816.203 Fixed-price contracts with economic price adjustment.****816.203-4 Contract clauses.**

(e) The contracting officer shall, when contracting by negotiation, use the following clauses.

(1) The contracting officer shall insert the clause at [852.216-71](#), “Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, subject to [FAR 16.203-4\(d\)\(1\)](#) and when changes to a price index will be used to calculate corresponding changes to the total contract price or unit prices of the contract.

(i) Exceptions:

(A) Do not use this clause when changes to the price index will apply to only a component part of the contract price.

(B) Do not publish or include the footnotes in the solicitation, they are only included herein to provide guidance to contracting officers.

(2) The contracting officer shall insert the clause at [852.216-72](#), “Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index,” in solicitations and firm fixed price contracts, and subject to [FAR 16.203-4\(d\)\(1\)](#) when changes to an industry price index shall be used to calculate changes to only a portion of the contract price or the unit prices of the contract.

(i) Exceptions:

(A) The clause should not be used when a change in the index price will be applied directly and totally to the contract price or the unit prices, *i.e.*, when the Consumer Price Index is used to calculate changes and a 5% increase in the CPI would result in a 5% increase in the total contract price of the unit prices.

(B) Do not publish or include the footnotes in the solicitation, as they are only provided for guidance to the contracting officer.

(3) The contracting officer shall insert the clause at [852.216-73](#), “Economic Price Adjustment—State Nursing Home Care for Veterans,” in solicitations and firm fixed price contracts subject to [FAR 16.203-4\(d\)\(1\)](#) and the following circumstance: When changes to the Medicaid rate, as authorized by the State Medicaid Agency (SMA), shall be used to calculate corresponding changes in the total contract price or the per diem prices of the agreement or contract.

(4) The contracting officer shall insert the clause at [852.216-74](#), “Economic Price Adjustment—Medicaid Labor Rates,” in solicitations and firm fixed price contracts when the conditions specified in [FAR 16.203-4\(c\)\(1\)](#) apply. The clause is modifiable by increasing the 10-percent maximum limit on aggregate increases specified in paragraph (c)(4) of this section, upon the approval by the Head of the Contracting Activity (HCA) or designee.

(5) The contracting officer shall Insert the clause at [852.216-75](#), “Economic Price Adjustment—Fuel Surcharge,” in solicitations and firm fixed price contracts when contracting by negotiation is subject to changes in the cost of fuel increases. The clause is subject to the conditions at [FAR 16.203-4\(d\)\(1\)](#).

(f) The contracting officer shall follow procedures as prescribed in [FAR 16.203-4\(c\)](#) and 38 CFR 51.41(b)(1) for EPA fixed price contracts based on Medicaid rates. These procedures shall be used when contracting by negotiation between the VA and the State Veteran Home for making payments under contracts for nursing home care for Veterans.

Subpart 816.5—Indefinite-Delivery Contracts

(Revised 12/21/2022)

[Deviation per Class Deviation from VA Acquisition Regulation 806.501 and 816.505(b)(8) to Update the Official Title of the VA Advocate for Competition and the VA Ombudsman, dated September 9, 2021, to update the official agency title for two key acquisition roles, the VA Advocate for Competition and the VA Ombudsman. These roles are designated to the Associate Executive Director for Procurement Policy, Systems and Oversight. As a result, Class Deviation to 806.501, Requirements (VAIQ 7640739), dated December 3, 2015, is hereby rescinded.]

816.505 Ordering.

(b)(8) *Task-order and delivery-order ombudsman.* The task-order contract and delivery-order ombudsman for VA is the Associate Executive Director for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any

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corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

816.506-70 Requirements—supplement for mortuary services.

Insert the clause [852.216-76](#), Requirements—Supplement for Mortuary Services, in contracts for mortuary services containing [FAR clause 52.216-21](#), Requirements. The contracting officer shall insert activities authorized to place orders in paragraph (e) of the clause.

816.570 Ordering Officers.

In accordance with [801.601](#), when authorized, ordering officers may place orders for supplies and services against established Indefinite-Delivery Contracts within the ordering limits identified in the contract or the specific ordering guide when funding is available. Ordering officers shall only place orders against the contract if it is awarded to a single awardee. When a contracting officer appoints an ordering officer in writing after award, the contracting officer will furnish the contractor with an updated list of individual ordering officers authorized to place orders against the contract. Ordering officers may not negotiate contract terms and conditions, determine price reasonableness, or determine best value.

Subpart 816.7—Agreements
*(Added 3/23/2018)***816.770 Consignment agreements.**

Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is defined as a delivery method for a specified period of time in which the contractor provides an item/s for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Consignment agreements are allowable and shall be considered in those instances when the requirement for an item is immediate and on-going and when it is impossible to predetermine the type or model of a particular item until the need is established, and it is determined to be in the best interest of the VA.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 817—SPECIAL CONTRACTING METHODS

Subpart 817.1—[RESERVED]

Subpart 817.2—[RESERVED]

Subpart 817.4—[RESERVED]

Subpart 817.5—Interagency Acquisitions

Sec.

817.501 General.

Subpart 817.70—Undefinitized Contract Actions

817.7000 Scope.
817.7001 Definitions.
817.7002 Exceptions.
817.7003 Policy.
817.7004 Limitations.
817.7004-1 Authorization.
817.7004-2 Price ceiling.
817.7004-3 Definitization schedule.
817.7004-4 Final price negotiation—profit.
817.7005 Contract clause.

AUTHORITY: 38 U.S.C. 8127-8128; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**PART 817—SPECIAL CONTRACTING METHODS***(Revised 7/24/2019)***Subpart 817.1—[RESERVED]****Subpart 817.2—[RESERVED]****Subpart 817.4—[RESERVED]****Subpart 817.5—Interagency Acquisitions****817.501 General.**

(d) Agreements pursuant to [FAR subpart 17.5](#), including construction, shall include a requirement, that, when acquiring goods and services on behalf of the Department of Veterans Affairs, the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart [819.70](#).

Subpart 817.70—Undefinitized Contract Actions**817.7000 Scope.**

This subpart prescribes policies and procedures for use of undefinitized contract actions.

817.7001 Definitions.

As used in this subpart—

(a) *Contract action* includes:

(1) Contracts and contract modifications for supplies or services.

(2) Task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals and value engineering change proposals.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive

Part 817—Special Contracting Methods

contract.

(c) *Definitization proposal* means a proposal containing sufficient data for the VA to do complete and meaningful analyses and audits of the—

(1) Data in the proposal; and

(2) Any other data that the contracting officer has determined VA needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts and orders under basic ordering agreements for which the final price has not been agreed upon before performance has begun.

817.7002 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart:

(1) Purchases at or below the simplified acquisition threshold.

(2) Congressionally mandated long-lead procurement contracts.

(b) However, the contracting officer shall apply the policy and procedures to the contract actions in paragraph (a) to the maximum extent practicable.

817.7003 Policy.

Undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable.

817.7004 Limitations.**817.7004-1 Authorization.**

The contracting officer shall obtain approval one level above the contracting officer

Part 817—Special Contracting Methods

before—

(a) *Entering into a UCA.* The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on the VA resulting from delays in beginning performance.

(b) *Including requirements for non-urgent items and equipment in a UCA.* The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the Government.

(c) *Modifying the scope of a UCA when performance has already begun.* The request should show that the modification is consistent with good business practices and in the best interests of the Government.

817.7004-2 Price ceiling.

UCAs shall include a not-to-exceed price.

817.7004-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a definitization proposal); or

(2) The date on which the amount of funds paid to the contractor under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a definitization proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely definitization proposal, the contracting officer may suspend or reduce progress payments under [FAR 32.503-6](#), or take other appropriate action.

817.7004-4 Final price negotiation—profit.

Before the final price of a UCA is negotiated, contracting officers shall ensure the profit agreed to and documented in the contract negotiation memorandum reflects consideration of any risks incurred in performance of the work under the UCA.

817.7005 Contract clause.

(a) Use the clause at [852.217-70](#), Contract Action Definitization, in—

(1) All UCAs;

- (2) Solicitations associated with UCAs;
- (3) Orders against basic ordering agreements;
- (4) Indefinite delivery task orders; and
- (5) Any other type of contract providing for the use of UCAs.

(b) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(c) If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of [FAR 15.403-1](#), [15.403-2](#), or [15.403-3](#) for not requiring submission of certified cost or pricing data, the words “and certified cost or pricing data” may be deleted from paragraph (a) of the clause.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS PROGRAMS

Sec.
819.000 Scope of part.

Subpart 819.2—Policies

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819.202 Specific policies.
819.203 Relationship among small business programs.
819.203-70 Priority for SDVOSB/VOSB contracting preferences.

Subpart 819.3—Determination of Small Business Size and Status for Small Business Programs

819.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.
819.307-70 SDVOSB/VOSB status protests.

Subpart 819.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves

819.501 General.
819.501-70 General principles for setting aside VA acquisitions.
819.502 Setting aside acquisitions.
819.502-1 Requirements for setting aside acquisitions.
819.502-2 Total small business set-asides.
819.507 Solicitation provisions and contract clauses.
819.507-70 Additional VA solicitation provisions and contract clauses.

Subpart 819.6—[Reserved]

Subpart 819.7—The Small Business Subcontracting Program

819.704-70 VA subcontracting plan requirements.
819.708 Contract clauses.

Part 819—Small Business Programs

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

- 819.800 General.
- 819.811 Preparing the contracts.
- 819.811-370 VA/SBA Partnership Agreement and contract clauses.

Subpart 819.70—The VA Veterans First Contracting Program

- 819.7001 General.
- 819.7002 Applicability.
- 819.7003 Eligibility.
- 819.7004 Limitations on subcontracting compliance requirements.
- 819.7005 Contracting order of priority.
- 819.7006 VA service-disabled veteran-owned small business set-aside procedures.
- 819.7007 VA veteran-owned small business set-aside procedures.
- 819.7008 Sole source awards to certified service-disabled veteran-owned small businesses.
- 819.7009 Sole source awards to certified veteran-owned small businesses.
- 819.7010 [Reserved]
- 819.7011 Contract clauses.

Subpart 819.71—[Reserved]

Authority: 15 U.S.C. 631, et seq.; 15 U.S.C. 637(d)(4)(E); 38 U.S.C. 8127-8128; 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 through 1.304.

PART 819—SMALL BUSINESS PROGRAMS**819.000 Scope of part.**

(a) This part supplements [FAR part 19](#) and implements the service-disabled veteran-owned small business (SDVOSB), veteran-owned small business (VOSB), and small business provisions of 38 U.S.C. 8127 and 8128, Executive Order 13360, and the Small Business Act (15 U.S.C. 631 et. seq.) as applied to the Department of Veterans Affairs (VA). This part also covers—

- (1) Goals for using SDVOSBs and VOSBs;
- (2) Priorities and preferences for using SDVOSBs/VOSBs;
- (3) SDVOSB/VOSB eligibility and contract compliance;
- (4) Setting aside acquisitions for SDVOSBs/VOSBs;
- (5) Sole-source awards to SDVOSBs and VOSBs; and
- (6) Evaluation preferences and contract clauses.

Subpart 819.2—Policies**819.201 General policy.**

(a) It is VA policy that small business concerns owned and controlled by veterans shall have maximum practicable opportunity to participate in VA acquisitions, consistent the priorities and preferences prescribed under the Veterans First Contracting Program in subpart [819.70](#).

(1) To carry out this policy the Secretary shall establish annual SDVOSB and VOSB contracting goals.

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

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

(c) In addition to the duties and responsibilities in [FAR 19.201\(c\)](#), the Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for overseeing implementation of the Veterans First Contracting Program under subpart [819.70](#).

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

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

819.202 Specific policies. (DEVIATION)

OSDBU is responsible for reviewing procurement strategies, establishing thresholds for such reviews and making recommendations to assist contracting officers in the implementation of this part. These responsibilities shall be conducted within the VA hierarchy of small business program preferences established by 38 U.S.C. 8127(h) (see subpart [819.70](#)), which requires VA to consider preferences for eligible and certified SDVOSBs first, then preferences for eligible and certified VOSBs, both listed in the SBA certification database on the SBA Veterans Small Business Certification Program (VetCert) portal at <https://veterans.certify.sba.gov/> (see 819.7003 and 819.7005). Contracting officers shall use VA Form 2268, Small Business Program and Contract Bundling Review, to document actions and recommendations.

819.203 Relationship among small business programs.

819.203-70 Priority for SDVOSB/VOSB contracting preferences.

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

(b) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. The requirement in this paragraph (b) applies even when using a contracting preference under [FAR part 19](#) (for example, a women-owned small business set-aside).

Subpart 819.3—Determination of Small Business Size and Status for Small Business Programs

819.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

819.307-70 SDVOSB/VOSB status protests.

All protests relating to size, status, and/or whether an SDVOSB or a VOSB is a "small business" are subject to the Small Business Administration (SBA) regulations at 13 CFR part 121 and must be filed in accordance with SBA guidelines at 13 CFR part 134 (see [FAR subpart 19.3](#)). Pursuant to Public Law 114-328, SBA will hear cases related to size and status, including ownership and control challenges under the VA Veterans First Contracting Program (see 38 U.S.C. 8127(f)(8)).

Subpart 819.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves

819.501 General.

819.501-70 General principles for setting aside VA acquisitions.

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

(1) Before setting aside or reserving an acquisition for small businesses under [FAR subpart 19.5](#), contracting officers shall refer to [808.002](#) and [819.203-70](#) and subpart [819.70](#) for VA SDVOSB/VOSB priorities and preferences.

(2) Set-asides under the Veterans First Contracting Program in subpart [819.70](#) (see [819.7006](#) and [819.7007](#)) have precedence over other small business set-asides authorized in [FAR part 19](#), both above and below the simplified acquisition threshold (SAT). An SDVOSB/VOSB set-aside satisfies the legislative requirement to reserve actions below the SAT for small business.

(3) Pursuant to 38 U.S.C. 8127(d), set-asides for SDVOSBs/VOSBs are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified firms, and that an award can be made at a fair and reasonable price that offers best value to the Government. (VA Rule of Two (see [802.101](#))).

(b) The set-aside principles in this section apply to VA acquisitions even when a procuring activity is meeting its goals or is planning the use of an interagency agreement, Federal Supply Schedule, or a multiple award contract, including a Governmentwide contract vehicle.

(c) The requirements in this section apply to all VA acquisitions under this subpart, including reserves, orders, and BPAs under multiple award contracts, GSA

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Federal Supply Schedule contracts, and Multi-Agency Contracts (MACs) awarded by another agency. A set-aside restricted to SDVOSBs/VOSBs pursuant to subpart [819.70](#) satisfies competition requirements in [FAR part 6](#), as well as fair opportunity requirements for orders under multiple-award contracts (see [FAR 16.505\(b\)\(2\)\(i\)\(F\)](#)).

819.502 Setting aside acquisitions.**819.502-1 Requirements for setting aside acquisitions.**

(b) Contracting officers shall refer to [808.002](#) for the VA policy regarding priorities for use of SDVOSBs/VOSBs and mandatory Government sources.

819.502-2 Total small business set-asides.

(a) If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis or, if permitted in the solicitation, the contracting officer will follow the tiered set-aside evaluation procedures in [819.7010](#), Tiered evaluation, and proceed to the next eligible tier in the evaluation process.

819.507 Solicitation provisions and contract clauses.**819.507-70 Additional VA solicitation provisions and contract clauses.**

For contracts, orders, or BPAs to be issued as SDVOSB/VOSB reserve, tiered evaluation, set-aside, or sole source, see [819.7011](#). Also see subparts [808.4](#) and [815.3](#) and [819.203-70](#) for requirements and clauses applicable to VA small business set-asides.

Subpart 819.6—[Reserved]**Subpart 819.7—The Small Business Subcontracting Program**

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

819.704-70 VA subcontracting plan requirements. (DEVIATION)

(a) VA's current subcontracting goals, at a minimum, shall be inserted into all solicitations which contain [FAR clause 52.219-9](#). To the maximum extent possible, the contracting officer shall ensure that individual subcontracting plans submitted by offerors subject to clause [852.219-70](#), VA Small Business Subcontracting Plan Minimum Requirements, include SDVOSB/VOSB goals that are commensurate with the annual VA SDVOSB/VOSB subcontracting goals (see [819.708](#)).

(1) Only certified firms listed in the SBA certification database on the SBA VetCert portal at <https://veterans.certify.sba.gov/> (see subpart [819.70](#)) will count towards SDVOSB and VOSB subcontracting goals or towards any subcontract commitments pursuant to paragraph (c).

(2) A contractor may reasonably rely on a subcontractor's status as shown in the SBA certification database of the date of subcontract award, provided the contractor retains records of the results of the SBA certification database query.

(3) In furtherance of 38 U.S.C. 8127(a)(4), contractors shall submit subcontracting plan reports to OSDDBU as set forth in clause [852.219-70](#), VA Small Business Subcontracting Plan Minimum Requirements. Unless otherwise directed by OSDDBU, VA Form 0896A, Report of Subcontracts to Small and Veteran Owned Business, shall be used to submit the required information.

(b) Subcontracting goals should be expressed as a percentage of total dollars to be subcontracted unless otherwise stated in the solicitation.

(c) If an offeror proposes to use an SDVOSB/VOSB subcontractor for the purpose of receiving SDVOSB/VOSB evaluation factors credit pursuant to [808.405-70](#) or [815.304-70](#), the contracting officer shall ensure that the offeror, if awarded the contract, actually uses the proposed subcontractor or another SDVOSB/VOSB for that subcontract or for work of similar value, in accordance with clause [852.208-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, or [852.215-71](#), Evaluation Factor Commitments.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB or VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business (see [809.406-270](#)).

819.708 Contract clauses.

(b) The contracting officer shall insert clause [852.219-70](#), Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include [FAR clause 52.219-9](#), Small Business Subcontracting Plan.

Subpart 819.8—Contracting With the Small Business Administration (the 8(a) Program)**819.800 General.**

(e) The Small Business Administration (SBA) and the Department of Veterans Affairs (VA) have entered into a Partnership Agreement delegating SBA's contract execution and administrative functions to VA. Contracting officers shall follow the alternate procedures in the Partnership Agreement and this subpart, as applicable, to award an 8(a) contract. In the event the Partnership Agreement ceases to be in effect, contracting officers shall follow the procedures in [FAR subpart 19.8](#).

819.811 Preparing the contracts.**819.811-370 VA/SBA Partnership Agreement and contract clauses.**

(a) Before placing new requirements under the 8(a) program, the contracting officer must determine whether an SDVOSB/VOSB set-aside is mandated under the VA Rule of Two (see [802.101](#)). If the determination does not result in an SDVOSB/VOSB set-aside, the contracting officer may consider the 8(a) program.

(b) The Partnership Agreement provides that SBA can release procurements already in the program whenever an SDVOSB or VOSB set-aside is feasible.

(c) When an 8(a) acquisition is processed pursuant to the Partnership Agreement, the contracting officer shall:

(1) For competitive solicitations and awards, use the clause at [852.219-71](#), VA Notification of Competition Limited to Eligible 8(a) Participants, substituting paragraph (c) of [FAR 52.219-18](#), Notification of Competition Limited to Eligible 8(a) Participants, with paragraph (c) contained in [852.219-71](#).

(2) For noncompetitive solicitations and awards insert the clause at [852.219-72](#), Notification of Section 8(a) Direct Awards, instead of the prescribed FAR clauses at [52.219-11](#), Special 8(a) Contract Conditions; [52.219-12](#), Special 8(a) Subcontract Conditions; and [52.219-17](#), Section 8(a) Award.

(3) In all instances, contracting include the clause at [FAR 52.219-14](#), Limitations on Subcontracting, or if applicable [52.219-33](#), Nonmanufacturer Rule.

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran

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Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

Subpart 819.70—The VA Veterans First Contracting Program**819.7001 General.****819.7001 General. (DEVIATION)**

(a) Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, as amended (38 U.S.C. 8127-8128), authorizes a VA specific program to increase contracting opportunities for eligible small business concerns owned and controlled by Veterans with service-connected disabilities and small business concerns owned and controlled by Veterans. These eligible small businesses listed in the SBA certification database, pursuant to 13 CFR 128 are referred to as certified service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) or collectively certified SDVOSB/VOSB for ease of reference.

(b) The program as implemented in this subpart shall be known as the Veterans First Contracting Program. The purpose of the program is to increase contracting opportunities and provide for priority in the award of contracts and subcontracts to SDVOSBs/VOSBs so they can fully participate in the VA contracting process. Certified SDVOSBs qualify for any VOSB preferences under this subpart.

(c) VA's program is codified at 38 U.S.C. 8127, and provides the authority for VA contracting officers to make awards to certified SDVOSBs/VOSBs using restricted competition, as well as other than full and open competition (sole source) (see 38 U.S.C. 8127 (b), (c) and (d)), as set-forth in this subpart. Additionally, 38 U.S.C. 8128 provides the authority for VA to give certified SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts using evaluation preferences.

(d) Contracting officers shall award contracts by restricting competition to eligible SDVOSBs/VOSBs as provided in [819.7006](#) and [819.7007](#). The contracting officer may use other preferences in this subpart as appropriate and in accordance with procuring activity guidelines.

(e) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to certified SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. In carrying out this responsibility, contracting officers shall include the clauses prescribed at [808.405-570](#) and [815.304-71](#) in competitive solicitations and contracts that are not set-aside for SDVOSB/VOSB, including those under FAR part [12](#). The requirement in this paragraph (e) applies even when using a contracting preference under FAR part [19](#) (for example, a women-owned small business set-aside).

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(f) The attainment of goals or the use of interagency vehicles or Governmentwide contract vehicles (i.e., Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as provided in subpart [819.70](#). Moreover, if the VA enters into a contract, agreement, or other arrangement with any governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement shall comply, to the maximum extent feasible, with the provisions of the Veterans First Contracting Program as set forth in this subpart.

(g) Contracting officers shall ensure awards are made using the VA hierarchy of SDVOSB/VOSB preferences in this subpart. Specifically, the contracting officer will consider preferences for eligible SDVOSBs first, then preferences for other eligible VOSBs.

(h) When an offer of an SDVOSB/VOSB prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the contracting officer must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

819.7002 Applicability.

Unless otherwise exempted by law, this subpart applies to VA contracting activities and contracts (see [FAR 2.101](#)) including BPAs and orders under [FAR subpart 8.4](#) and acquisition of commercial products or commercial services under [FAR part 12](#). In addition, this subpart applies to VA contractors, their subcontractors and to any Government entity that has a contract, agreement, or other arrangement with the VA to acquire goods and services on behalf of the VA (see [817.501](#)). For applicability and VA policy regarding priorities for use of mandatory Government sources see [808.002](#).

819.7003 Eligibility. (DEVIATION)

(a) SDVOSB/VOSB certification, size eligibility, challenges, and appeals are governed by the Small Business Administration (SBA) regulations at 13 CFR parts 121, 128, and 134, except where directed otherwise by this part.

(b) At the time of submission of offers/quotes, and at the time of award of any contract, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB or VOSB eligible under this subpart;

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and

(3) Certified SDVOSB/VOSB listed in the SBA certification database at <https://veterans.certify.sba.gov/> (see 13 CFR 128).

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 128, and the managing joint venture partner makes the representations under paragraph (b) of this section.

(d) To receive a benefit under the Veterans First Contacting Program, an otherwise eligible SDVOSB/VOSB certified pursuant to 13 CFR 128, must also meet SBA requirements at 13 CFR parts 121, 125, and 128 including the nonmanufacturer rule requirements at 13 CFR 121.406(b) and limitations on subcontracting at 13 CFR 125.6. The nonmanufacturer rule (see 13 CFR 121.406) and the limitations on subcontracting requirements apply to all SDVOSB and VOSB set-aside and sole source contracts above the micro-purchase threshold. In addition, an offeror shall submit a certification of compliance to be considered eligible for any award under this part (see [819.7004](#)).

(e) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business. See [809.406-270](#).

819.7004 Limitations on subcontracting compliance requirements. (DEVIATION)

(a) A contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that—

(1) Only certified SDVOSBs listed in the SBA certification database are considered eligible and/or “similarly situated” under an SDVOSB sole source or set-aside.

(2) A VOSB is subject to the same limitations on subcontracting that apply to an SDVOSB.

(3) Any certified SDVOSB/VOSB listed in the SBA certification database is considered eligible and/or “similarly situated” under a VOSB sole source or set-aside.

(b) Pursuant to the authority of 38 U.S.C. 8127(l)(2), a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see [819.7011](#)).

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(1) The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal.

(2) The Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award.

(c) An otherwise eligible first tier subcontractor must meet the NAICS size standard assigned by the prime contractor and be listed in the SBA certification database to count as similarly situated. Any work that a first tier certified SDVOSB/VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded.

(d) An SDVOSB/VOSB awarded a contract on the basis of a set-aside, sole source, or an evaluation preference is required to comply with the limitations on subcontracting either by—

(1) The end of the base term, and then by the end of each subsequent option period; or, by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside for SDVOSB/VOSB as described in [808.405](#) and [FAR 16.505\(b\)\(2\)\(i\)\(F\)](#), or for an order issued directly to an SDVOSB/VOSB in accordance with [FAR 19.504\(c\)\(1\)\(ii\)](#), by the end of the performance period for the order.

(e) The contracting officer may also, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance of the contract, and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(f) Pursuant to Public Law 116-183, the Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), will implement a process to monitor compliance with the requirement in this section. The OSDBU and CAO shall jointly refer any violations or suspected violations to the VA Office of Inspector General. This referral obligation does not relieve contracting officers of their obligation to report suspected violations of law to the Office of the Inspector General (OIG).

(1) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith with respect to the requirements described in [819.7003\(d\)](#), such SDVOSB/VOSB shall be subject to any or all of the following—

(i) Referral to the VA Suspension and Debarment Committee;

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- (ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and
- (iii) Prosecution for violating 18 U.S.C. 1001.

(2) The Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.

819.7005 Contracting order of priority.

(a) In determining the acquisition strategy applicable to a procurement requirement not otherwise covered under [808.002](#), the contracting officer shall observe the order of contracting preferences in 38 U.S.C. 8127(h).

(b) Specifically, preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded to small business concerns owned and controlled by Veterans with service-connected disabilities as provided in this subpart.

(2) Contracts to small business concerns owned and controlled by Veterans that are not covered by paragraph (b)(1) of this section as provided in this subpart.

(3) Contracts awarded pursuant to—

(i) Section 8(a) of the Small Business Act (15 U.S.C. 637(a) as provided in [FAR subpart 19.8](#); or

(ii) Section 31 of the Small Business Act (15 U.S.C. 657a) as provided in [FAR subpart 19.13](#).

(4) Contracts awarded pursuant to any other small business set aside contracting preference, with due deference to the priority for awarding to women-owned small businesses as provided in [FAR 19.203\(b\) through \(e\)](#) and [FAR subpart 19.15](#).

819.7006 VA service-disabled veteran-owned small business set-aside procedures. (DEVIATION)

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by [808.002](#), [813.106](#), [819.7007](#), and [819.7008](#), the contracting officer shall set-aside a contract action exceeding the micro-purchase threshold for competition restricted to certified SDVOSBs upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more eligible certified SDVOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are certified SDVOSBs listed in the SBA certification database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB and small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract, as set forth in [819.7003\(b\) and \(c\)](#).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible certified SDVOSB listed in the SBA certification database, the contracting officer may make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition if warranted or otherwise procured using the most appropriate strategy based on the results of market research.

819.7007 VA veteran-owned small business set-aside procedures. (DEVIATION)

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by [808.002](#), [813.106](#), [819.7007](#), and [819.7008](#), the contracting officer shall set aside a contract action exceeding the micro-purchase threshold for competition restricted to certified VOSBs listed in the SBA certification database upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more eligible certified VOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting VOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are certified and listed in the SBA certification database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB/VOSB and small business status based on the size standard corresponding to the NAICS code assigned to the solicitation/contract (see [819.7003\(b\) and \(c\)](#)).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible certified VOSB listed in the SBA certification database in response to a VOSB set-aside, the contracting officer may make an award to that concern. If the contracting officer decides not to make an award to the single acceptable offer received, or if the contracting officer receives no acceptable offers from eligible VOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs in accordance with [819.7005](#) or otherwise procured using the most appropriate strategy based on the results of market research.

819.7008 Sole source awards to certified service-disabled veteran-owned small businesses. (DEVIATION)

(a) A contracting officer may award a contract to a certified service-disabled veteran-owned small business (SDVOSB) listed in the SBA certification database using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed \$5 million;

(2) The requirement is synopsized and the required justification pursuant to [FAR 6.302-5\(c\)\(2\)\(ii\)](#) is posted in accordance with [FAR part 5](#);

(3) The SDVOSB has been determined to be a responsible contractor with respect to performance; and

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

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of SDVOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one SDVOSB can meet the requirement is not required. However, in accordance with [FAR 6.302-5\(c\)\(2\)\(ii\)](#), contracts awarded using this authority shall be supported by a written justification and approval described in [FAR 6.303](#) and [6.304](#), as applicable.

(d) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in [819.7003](#).

(e) A procurement requirement estimated to exceed the legislative threshold of \$5 million shall not be split or subdivided to permit the use of this SDVOSB sole source authority.

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819.7009 Sole source awards to-certified veteran-owned small businesses. (DEVIATION)

(a) A contracting officer may award a contract to a certified veteran-owned small business (VOSB) listed in the SBA certification database using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed \$5 million;

(2) The requirement is synopsisized and the required justification pursuant to [FAR 6.302-5\(c\)\(2\)\(ii\)](#) is posted in accordance with [FAR part 5](#);

(3) The VOSB has been determined to be a responsible contractor with respect to performance;

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government; and

(5) No responsible SDVOSB has been identified.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of VOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one VOSB can meet the requirement is not required. However, in accordance with [FAR 6.302-5\(c\)\(2\)\(ii\)](#), contracts awarded using this authority shall be supported by a written justification and approval described in [FAR 6.303](#) and [6.304](#), as applicable.

(d) When conducting a VOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in [819.7003](#).

(e) A procurement requirement estimated to exceed the legislative threshold of \$5 million shall not be split or subdivided to permit the use of this VOSB sole source authority.

Deviation per [Class Deviation](#) to VAAR 815.101-370 and 819.7010, Tiered Set-Aside Evaluation, dated July 28, 2023, to move the coverage at 819.7010, Tiered set-aside Evaluation, to 815.101-370, Tiered set-aside evaluation. This deviation expires when incorporated into the VAAR or is otherwise rescinded.

819.7010 [Reserved]**819.7011 Contract clauses. (DEVIATION)**

Part 819—Small Business Programs

(a) The contracting officer shall insert clause [852.219-73](#), VA Notice of Total Set-Aside for Certified Service-Disabled Veteran-Owned Small Businesses, or clause [852.219-74](#), VA Notice of Total Set-Aside for Certified Veteran-Owned Small Businesses, as applicable, in solicitations, orders and contracts that are set-aside, reserved, evaluated or awarded under this subpart. This includes sole source awards as well as multiple-award contracts when orders may be set aside for certified SDVOSBs/VOSBs as described in [808.405](#) and FAR [19.504\(c\)\(1\)\(ii\)](#).

(b) The contracting officer shall insert the clause at [852.219-75](#), VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, in solicitations and contracts for services and construction, including BPAs, BOAs, and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to certified SDVOSBs/VOSBs.

(c) The contracting officer shall insert the clause at [852.219-76](#), VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products, in solicitations and contracts for supplies or products, including BPAs, BOAs, and orders, for acquisitions that are to be awarded on the basis of an SDVOSB/VOSB set-aside, sole source, or an evaluation preference under this subpart. This includes orders awarded under multiple-award contracts to certified SDVOSBs/VOSBs. The contracting officer shall tailor clause [852.219-76](#), and paragraph (a)(2)(iii) of the clause, as appropriate.

Subpart 819.71—[Reserved]

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

**PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT
ACQUISITIONS**

(Revised 5/16/2018)

Subpart 822.3—Contract Work Hours and Safety Standards Act

Sec.

822.304 Variations, tolerances, and exemptions.
822.305 Contract clause.

Subpart 822.4—[Reserved]

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 29 CFR 5.15(d); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS*(Revised 5/16/2018)***Subpart 822.3—Contract Work Hours and Safety Standards Act****822.304 Variations, tolerances, and exemptions.**

For contracts providing nursing home care for Veterans, the Secretary of Labor has allowed a variation to the requirements of Contract Work Hours and Safety Standards (the statute)(40 U.S.C. 3701, *et seq.*) regarding the payment of overtime (see 29 CFR 5.15(d)(2)). The variation provides that overtime may be calculated on a basis other than a 40 hour workweek (as an alternate work period) when—

(a) Due to operational necessity or convenience a work period of 14 consecutive days may be accepted in lieu of the workweek of 7 consecutive days for the purpose of computing overtime compensation, pursuant to an agreement or understanding arrived at between the contractor and the contractors' employees before performance of the work; and

(b) If the contractor's employees receive compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1 1/2 times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

822.305 Contract clause.

The contracting officer shall insert the clause at [852.222-70](#), Contract Work Hours and Safety Standards—Nursing Home Care for Veterans, in solicitations and contracts for nursing home care for Veterans. The contractor shall flow down this clause and insert in all subcontracts, at any tier.

Subpart 822.4—[Reserved]

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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 [852.223-70](#), 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 [852.223-71](#), 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 2/24/2023)

Subpart 824.1—Protection of Individual Privacy

Sec.

- 824.102 General.
- 824.103 Procedures.
- 824.103-70 Protection of privacy—general requirements and procedures related to Business Associate Agreements.
- 824.103-71 Liquidated damages—protection of information.

Subpart 824.2—Freedom of Information Act

- 824.203 Policy.

AUTHORITY: 5 U.S.C. 552a; 38 U.S.C. 5723-5724, 5725(a)-(c); 40 U.S.C. 121(c), 41 U.S.C. 1121(c), 1702; 38 CFR 1.550 through 1.562 and 1.575 through 1.584; and 48 CFR 1.301 through 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.

824.103-70 Protection of privacy—general requirements and procedures related to Business Associate Agreements.

To ensure compliance with unique responsibilities to protect protected health information (PHI), contractors performing under VA contracts subject to unique PHI and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall comply with requirements and the clause ([852.204-71](#), Information and Information Systems Security) prescribed at [804.1903](#).

(a) *HIPAA Business Associate Agreement requirement.* Under the HIPAA Privacy and Security Rules (see [45 CFR part 160](#)), a covered entity (Veterans Health Administration (VHA)) must have a satisfactory assurance that its PHI will be safeguarded from misuse. To do so, a covered entity enters into a Business Associate Agreement (BAA) with a contractor (now the business associate), which obligates the business associate to only use the covered entity's PHI for the purposes for which it was engaged, provide the same protections and safeguards as is required from the covered entity, and agree to the same disclosure restrictions to PHI that is required of the covered entity in situations where a contractor —

(1) Creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain health care operations activities or functions on behalf of the covered entity; or

(2) Provides one or more of the services specified in the HIPAA Privacy Rule to or for the covered entity.

(b) *Veterans Health Administration (VHA)—a HIPAA covered entity.* VHA is the only administration of the Department of Veterans Affairs that is a HIPAA covered entity under the HIPAA Privacy Rule.

(c) *Contractors or entities required to execute BAAs for contracts and other agreements become VHA business associates.* BAAs are issued by VHA or may be issued by other VA programs in support of VHA. The HIPAA Privacy Rule requires VHA to execute compliant BAAs with persons or entities that create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain activities, functions or services to, for, or on behalf of VHA.

(1) There may be other VA components or staff offices which also provide certain services and support to VHA and must receive PHI in order to do so. If these components award contracts or enter into other agreements, purchase/delivery orders, modifications, and issue Governmentwide purchase card transactions to help in the delivery of these services to VHA, they will also fall within the requirement to obtain a satisfactory assurance from these contractors by executing a BAA.

(2) Contractors or other entities supporting VHA required to create, receive, maintain, or transmit VHA PHI shall be required to execute a BAA as mandated by the HIPAA Privacy Rule and requested by the contracting officer, the contracting officer's representative (COR) or the cognizant privacy officer—

(i) Whether via a contract or agreement with VHA; or

(ii) Whether provided from or through another VA administration or staff activity contract for supplies, services or support that involves performing a certain activity, function or service to, for, or on behalf of VHA (see VA Directive 6066,

Protected Health Information (PHI) and Business Associate Agreements Management).

(d) *BAA requirement flow down to subcontractors.* A prime contractor required to execute a BAA shall also obtain a satisfactory assurance, in the form of a BAA, that any of its subcontractors who will also create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI will comply with HIPAA requirements to the same degree as the contractor. A contractor employing a subcontractor who creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such VHA PHI under a contract or agreement is required to execute a BAA with each of its subcontractors which also obligates the subcontractor (*i.e.*, also a business associate) to provide the same protections and safeguards and agree to the same disclosure restrictions to VHA's PHI that is required of the covered entity and the prime contractor.

824.103-71 Liquidated damages—protection of information.

(a) *Purpose.* As required by [38 U.S.C. 5725](#) any contracts where sensitive personal information such as PHI must be disclosed to the contractor for the contractor to perform certain functions or services on behalf of VHA shall include a liquidated damages clause as prescribed at [811.503-70](#).

(b) *Applicability to contracts requiring Business Associate Agreements.* A liquidated damages clause is required (see 811.503-70) when performance under a contract requires a contractor to enter into a Business Associate Agreement with VHA because the contractor or its subcontractor is required to create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI, for certain services or functions, on behalf of VHA. The liquidated damages clause shall be added even in situations where the prime contractor never directly receives VA's sensitive personal information and the same flows directly to the prime contractor's subcontractor.

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.

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 825—[RESERVED]

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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 E—GENERAL CONTRACTING REQUIREMENTS

PART 827—PATENTS, DATA, AND COPYRIGHTS

Subpart 827.3—Patent Rights under Government Contracts

827.306 Licensing background patent rights to third parties.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 827—PATENTS, DATA, AND COPYRIGHTS

[Deviation per [Class Deviation](#) from VAAR parts 803, 819, 827, 847, and 849 Regarding Certified Mail Receipt Requested and Mail Requirements, dated September 28, 2020, provides an exception to certified mail receipt requested and mail requirements. This deviation expires once incorporated into the VAAR or is otherwise rescinded.]

Subpart 827.3—Patents, Data, and Copyrights

827.306 Licensing background patent rights to third parties.

(b) The agency shall notify the contractor of the determination by certified or registered mail, or by any other method that provides evidence of receipt.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds and Other Financial Protections

Sec.

- | | |
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| 828.106 | Administration. |
| 828.106-70 | Bond premium adjustment. |
| 828.106-71 | Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding. |
| 828.106-72 | Contract provision. |

Subpart 828.2—[Reserved]

Subpart 828.3—Insurance

- | | |
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| 828.306 | Insurance under fixed-price contracts. |
|---------|--|

Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

- | | |
|----------|----------------------------|
| 828.7000 | Scope of subpart. |
| 828.7001 | Extent of indemnification. |
| 828.7002 | Financial protection. |
| 828.7003 | Indemnification clause. |

AUTHORITY: 38 U.S.C. 8127-8128 and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C 1121; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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Subpart 828.1—Bonds and Other Financial Protections
(Revised 3/23/2018)

828.106 Administration.

828.106-70 Bond premium adjustment.

The contracting officer shall insert the clause at [852.228-70](#), Bond Premium Adjustment, in solicitations and contracts when performance and payment bonds or payment protection is required.

828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

VA prime contractors are encouraged to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

828.106-72 Contract provision.

Insert [852.228-72](#), Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds, in solicitations that include [FAR clause 52.228-1](#), Bid Guarantee.

Subpart 828.2—[Reserved]

Subpart 828.3—Insurance
(Revised 3/23/2018)

828.306 Insurance under fixed-price contracts.

(a) The contracting officer shall insert the provision at [852.228-71](#), Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service.

(b) Paragraph (a) of this section does not apply to emergency or sporadic ambulance service authorized by VA policy, or other emergency or sporadic vehicle or aircraft services if both of the following conditions exist:

(1) The service is not used solely for the purpose of avoiding entering into a continuing contract.

(2) The services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

(Revised 3/23/2018)

828.7000 Scope of subpart.

(a) As used in this subpart, the term “contractor” includes subcontractors of any tier under a contract containing an indemnification provision under 38 U.S.C. 7317.

(b) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts involving medical research or research and development that involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(c) The authority to indemnify the contractor under this subpart does not create any rights to third parties that do not exist by law.

828.7001 Extent of indemnification.

(a) A contract for medical research or development authorized by 38 U.S.C. 7303, may provide that the Government will indemnify the contractor against losses or liability specified in paragraphs (b) and (c) of this section if all of the following apply:

(1) The contract work involves a risk of an unusually hazardous nature.

(2) The losses or liability arise out of the direct performance of the contract.

(3) The losses or liability are not covered by the financial protection required under [828.7002](#).

(b) The Government may indemnify a contractor for 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. The indemnification will not cover liability under State or Federal worker’s injury compensation laws to employees of the contractor who are both:

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

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

(c) The Government may indemnify the contractor for loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

Part 828—Bonds and Insurance

(d) A contract that provides for indemnification in accordance with this subpart must also require that:

(1) The contractor must 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 choose to control or assist in the defense of any suit or claim for which indemnification is provided in the contract. (38 U.S.C. 7317)

828.7002 Financial protection.

(a) 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 that meets 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.

(b) 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. If a contractor elects to self-insure, the contractor must provide the contracting officer, before award, proof of financial responsibility up to the maximum amount required. (38 U.S.C. 7317)

828.7003 Indemnification clause.

The contracting officer shall include the clause, [852.228-72](#), "Indemnification of Contractor—Hazardous Research Projects" in contracts and solicitations that indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third person for death, bodily injury, or loss of or damage to property from a risk that the contract defines in the performance work statement, the statement of work, or the statement of objectives as unusually hazardous.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 829—TAXES

(Revised 10/24/18)

Sec.

829.000 Scope of part.

Subpart 829.2—Federal Excise Taxes

829.203 Other Federal tax exemptions.

829.203-70 Tax exemptions for alcohol products.

Subpart 829.3—State and Local Taxes

829.303 Application of State and local taxes to Government contractors and subcontractors.

AUTHORITY: 26 U.S.C. 5214(a)(2), 5271, 7510; 40 U.S.C. 121(c); 41 U.S.C. 1303(a)(2); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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Subpart 829.2—Federal Excise Taxes**829.000 Scope of part.**

This part states the policies and procedures for the following:

(a) Exemptions of alcohol products purchased for use by the VA medical care program from Federal excise taxes.

(b) Specified refund procedures for State and local taxes.

Subpart 829.2—Federal Excise Taxes**829.203 Other Federal tax exemptions.****829.203-70 Tax exemptions for alcohol products.**

(a) *General.*

(1) Pursuant to 26 U.S.C. 5214(a)(2) and 26 U.S.C. 5271, VA may purchase spirits using a tax exemption as provided by Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR parts 1-39). As stated in 27 CFR 19.426, agencies of the United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on form TTB F 5150.33 or must have a previously issued permit on ATF Form 1444.

(2) When purchasing spirits under a tax exemption, the contracting officer shall indicate in the contract document the basis for the exemption and make a copy of the permit available to the contractor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated or as directed by the contracting officer.

(3) Department of Veterans Affairs activities that require spirits free of tax for beverage purposes under 26 U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee.

(b) *Specially denatured spirits or spirits free of tax for nonbeverage purposes.* Contracting officers may make purchases of excise tax-free spirits, including denatured alcohol and specially denatured alcohol only from qualified distillery plants or bonded dealers.

(1) Permits previously issued on Alcohol, Tobacco, and Firearms (ATF) Form 1444, Tax-Free Spirits for Use of United States, remain valid until surrendered or cancelled.

Part 829—Taxes

(2) A copy of the current ATF Form 1444 or TTB Form 5150.33 shall be made available to the supplier with the initial order. The permit number only needs to be referenced on any future orders with the same supplier.

(c) *Wine*. No tax exemption form or ATF/TTB permit is required for the tax-free procurement of wine from bonded wine premises. The purchase order must show the kind, quantity, and alcohol content of the wine and must state the purpose for which wine is to be used (see 27 CFR 24.293). An extra copy of a properly executed purchase order may be furnished to the bonded wine premises from which wine is purchased to facilitate record keeping. The order must be signed by the head of contracting activity or their designee.

Subpart 829.3—State and Local Taxes**829.303 Application of State and local taxes to Government contractors and subcontractors.**

(a) The authority to make the determination prescribed in [FAR 29.303\(a\)](#) is delegated, without power of redelegation, to the head of the contracting activity (HCA).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 830—[RESERVED]

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures for Veterans Services

Sec.

831.7000	Scope of subpart.
831.7000-1	Definitions.
831.7001	Allowable costs and negotiated prices under vocational rehabilitation and education contracts.
831.7001-1	Tuition.
831.7001-2	Special services or courses.
831.7001-3	Books, supplies, and equipment required to be personally owned.
831.7001-4	Medical services and hospital care.
831.7001-5	Consumable instructional supplies.
831.7001-6	Reimbursement for other supplies and services.

AUTHORITY: 38 U.S.C. chapter 31; 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 E—GENERAL CONTRACTING REQUIREMENTS PART 831—**CONTRACT COST PRINCIPLES AND PROCEDURES****Subpart 831.70—Contract Cost Principles and Procedures for Veterans Services (Revised 10/15/18)****831.7000 Scope of subpart.**

This subpart contains general cost principles and procedures for the determination and allowance of costs or negotiation of prices under cost reimbursement or fixed-price contracts for providing vocational rehabilitation, education, and training to eligible Veterans under 38 U.S.C. chapter 31, (referred to as a “chapter 31 program”). This subpart applies to contracts with educational institutions as well as to contracts with commercial and non-profit organizations.

831.7000-1 Definitions.

Chapter 31 refers to the vocational rehabilitation and employment (VR&E) program that provides training and rehabilitation for Veterans with service-connected disabilities under chapter 31 of Title 38 U.S.C.

Consumable instructional supplies means those supplies which are required for instruction in the classroom, shop school, and laboratory of an educational institution, which are consumed, destroyed, or expended by either the student, instructor or both in the process of use and which have to be replaced at frequent intervals without adding to the value of the institution’s physical property.

Similarly circumstanced non-Veteran student means a student in equal or like situations as a person who is neither receiving educational or training benefits under chapter 31 or chapter 33 of Title 38 U.S.C. or the savings provisions of section 12(a) of Public Law 85-857, nor having all or any part of tuition fees or other charges paid by the educational institution.

Work adjustment training means a specialized structure program that is facility or community based and designated to assist an individual in acquiring or improving work skills, work behaviors, work tolerance, interpersonal skills or work ethics.

831.7001 Allowable costs and negotiated prices under vocational rehabilitation and education contracts. [No Text.]**831.7001-1 Tuition.**

(a) Tuition and enrollment fees shall be paid at the institution’s customary amount that—

Part 831—Contract Cost Principles and Procedures for Veterans Services

(1) Does not exceed the tuition charged to similarly circumstanced non-Veteran students; and

(2) Is equal to the lowest price offered or published for the entire course, semester, quarter, or term.

(b) The cost of the Veteran student's tuition and fees under a contract shall be offset by—

(1) Any amount of tuition and fees that are waived by a State or other government authority; or

(2) Any amounts the Veteran student receives from a fellowship, scholarship, grant-in-aid, assistantship, or similar award, that limits its use to payment of tuition, fees, or other charges that VA normally pays as part of a chapter 31 program.

(c) VA will not pay tuition or incidental fees to institutions or establishments furnishing apprentice or on-the-job training. VA may elect to pay charges or expenses that fall into either of the following categories:

(1) Charges customarily made by a nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced non-Veteran students even if the trainee receives an incentive wage as part of the training.

(2) Training expenses incurred by an employer who provides on-the-job training following rehabilitation to the point of employability when VA determines that the additional training is necessary.

831.7001-2 Special services or courses.

Special services or courses are those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers them to be necessary for the rehabilitation of the trainee. VA will negotiate the costs/prices of special services or courses prior to ordering them.

831.7001-3 Books, supplies, and equipment required to be personally owned.

(a) *Reimbursement for books, supplies, and equipment.* VA will provide reimbursement for books, equipment, or other supplies of the same variety, quality, or amount that all students taking the same course or courses are customarily required to own personally. VA will provide reimbursement for items that the institution does not specifically require for pursuit of the course if VA determines that such items are needed because of the demands of the course, general possession by other students, and the disadvantage imposed on a Veteran student by not having the item.

(b) *Partial payment agreements.* Agreements in which VA would pay the institution a partial payment with the remainder to be paid by the Veteran student are not authorized.

(c) *Thesis expenses.* The institution's costs in connection with a Veteran student's thesis are considered supplies and are therefore authorized for reimbursement if the Veteran student's committee chairman, major professor, department head, or appropriate dean certifies that the thesis is a course requirement and the expenses are required to complete the thesis. These expenses may include research expenses, typing, printing, microfilming, or otherwise reproducing the required number of copies.

(d) *Reimbursement for books, supplies, and equipment.* Books, supplies, and equipment that the institution purchases specifically for trainees will be reimbursed at the net cost to the institution. The VA shall reimburse the institution for books, supplies, and equipment when these items are—

(1) Issued to students from its own bookstore or supply store;

(2) Issued to students from retail stores or other non-institutionally owned establishments not owned by the contractor/institution but arranged or designated by them in cooperation with VA; or

(3) Rented or leased books, supplies and equipment and are issued to students for survey classes when it is customary that students are not required to own the books.

(e) *Handling charges.* VA shall reimburse the institution for any handling charges not to exceed more than 10 percent of the allowable charge for the books, equipment or other supplies unless—

(1) The tuition covers the charges for supplies or rentals or a stipulated fee is assessed to all students; or

(2) The handling charge is for Government-owned books that the contractor procures from the Library of Congress.

831.7001-4 Medical services and hospital care.

(a) VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced non-Veteran students. If payment of the fee is not required for similarly circumstanced non-Veteran students, payment may be made if VA determines that payment is in the best interest of the Veteran student and the Government.

(b) When the customary Veteran student's health fee does not cover medical services or hospital care, but these medical services are available in an institution-

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operated facility or with doctors and hospitals in the immediate area through a prior arrangement, VA may provide reimbursement for these services in a contract for the services if—

(1) An arrangement is necessary to provide timely medical services for Veteran students attending the facility under provisions of Chapter 31; and

(2) The general rates established for medical services do not exceed the rates established by VA.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a Veteran student's program at the facility.

831.7001-5 Consumable instructional supplies.

(a) VA will provide reimbursement for consumable instructional supplies that the institution requires for the instruction of all students, Veteran or non-Veteran students, pursuing the same or comparable course or courses when—

(1) The supplies are entirely consumed in the fabrication of a required project;
or

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse by disassembling or dismantling the end product.

(b) VA will not provide reimbursement for consumable instructional supplies if any of the following apply:

(1) The supplies can be salvaged for reuse.

(2) The supplies are used in a project that the student has elected as an alternate class project to produce an end product of greater value than that normally required to learn the skills of the occupation, and the end product will become the Veteran's property upon completion.

(3) The supplies are used in a project that the institution has selected to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the Veteran student to elect a particular course of study.

(4) The sale value of the end product is equal to or greater than the cost of supplies plus assembly, and the supplies have not been reasonably used so that the supplies are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

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(6) A third party loans the articles or equipment for repair or improvement and the third party would otherwise pay a commercial price for the repair or improvement.

(7) The number of projects resulting in end products exceeds the number normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies is included in the charge for tuition or as a fee designated for such purpose.

831.7001-6 Reimbursement for other supplies and services.

VA will provide reimbursement for other services and assistance that may be authorized under applicable provisions of 38 U.S.C. chapter 31 regulations, including, but not limited to, employment and self-employment services, initial and extended evaluation services, and independent living services.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 832—CONTRACT FINANCING

(Revised 11/17/2022)

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

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PART 832—CONTRACT FINANCING**832.001 Definitions.**

As used in this part:

(a) *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.

(b) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in [832.7001-1](#). Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(c) *Payment request* means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

832.006 Reduction or suspension of contract payments upon finding of fraud.**832.006-1 General.**

(b) The Senior Procurement Executive (SPE) is authorized to make determinations that there is substantial evidence that contractors' requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in [FAR 32.006](#).

832.006-4 Procedures.

(b) The Remedy Coordination Official (RCO) for VA is the Deputy Senior Procurement Executive (DSPE) who shall carry out the responsibilities of the agency head in [FAR 32.006-4\(b\)](#).

(e) The RCO shall carry out the responsibilities of the agency head in [FAR 32.006-4\(e\)](#) to notify the contractor of the reasons for the recommended action and of its right to submit information within a reasonable period of time in response to the proposed action under [FAR 32.006](#).

(1) The notice of proposed action will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the RCO to present information or argument in person or through a representative and may supplement the oral presentation with

Part 832—Contract Financing

written information and argument.

(2) The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the RCO does not receive a reply from the contractor within 30 calendar days, the RCO will base his or her recommendations on the information available. Any recommendation of the RCO under [FAR 32.006-4\(a\)](#) and paragraph (b) of this section, must address the results of this notification and the information, if any, provided by the contractor. After reviewing all the information, the RCO shall make a recommendation to the SPE whether or not substantial evidence of fraud exists.

(g) In addition to following the procedures in [FAR 32.006-4](#), the SPE shall provide a copy of each final determination and the supporting documentation to the contractor, the RCO, the contracting officer, and the Office of the Inspector General (OIG). The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

832.111-70 VA contract clauses for non-commercial purchases.

(a)(1) Insert the clause at [852.232-70](#), Payments Under Fixed-Price Construction Contracts (Without NAS-CPM) in solicitations and contracts that contain the FAR clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract does not require use of the “Network Analysis System—Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b)(1) Insert the clause at [852.232-71](#), Payments Under Fixed-Price Construction Contracts (Including NAS-CPM), in solicitations and contracts that contain the FAR clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract requires use of the “Network Analysis System—Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

Subpart 832.2—Commercial Item Purchase Financing

832.202 General.

832.202-1 Policy.

(d) HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts for commercial items with unusual contract financing or with commercial interim or advance payments approved for the previous fiscal year. The report shall include the contract number and amount, the amount of the unusual contract financing or with commercial interim or advance payments approved, and the kind and amount of security obtained for the advance.

832.202-4 Security for Government financing.

(a)(2) An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information—

(i) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm;

(ii) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash within the firm or branch performing the contract;

(iii) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial risk, and credit arrangements;

(iv) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions;

(v) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business; and

(vi) Any other financial information deemed necessary.

Subpart 832.4—Advance Payments for Non-Commercial Items

832.402 General.

(c)(1)(iii) The authority to make the determination required by [FAR 32.402\(c\)\(1\)\(iii\)](#) and to approve contract terms is delegated to the head of the contracting activity (HCA). The request for approval shall include the information required by [FAR 32.409-1](#) and shall address the standards for advance payment in [FAR 32.402\(c\)\(2\)](#). HCAs

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shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on number of contracts for non-commercial items with advance payments approved in the previous fiscal year. The report shall include the contract number and amount, the amount of the advance payment, and the kind and amount of security obtained for the advance.

832.404 Exclusions.

(b)(1) As permitted by 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term “other publications” includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(2) As permitted by 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(3) As permitted by 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees, including obtaining professional credentials under 5 U.S.C. 5757, in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

Subpart 832.5—[RESERVED]

Subpart 832.8—[RESERVED]

Subpart 832.9—[RESERVED]

Subpart 832.11—[RESERVED]

Subpart 832.70—Electronic Invoicing Requirements**832.7000 General.**

This subpart prescribes policy requirements for submitting and processing payment requests in electronic form.

832.7001 Electronic payment requests.

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by

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mail, through the United States Postal Service, to the designated agency office for—

- (1) Awards made to foreign vendors for work performed outside the United States;
- (2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;
- (3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;
- (4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or
- (5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.7001-1 Data transmission.

The contractor shall submit electronic payment requests through—

- (a) VA's Electronic Invoice Presentment and Payment System at the current website address provided in the contract; or
- (b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI).

832.7001-2 Contract clause.

The contracting officer shall insert the clause at [852.232-72](#), Electronic Submission of Payment Requests, in solicitations and contracts exceeding the micro-purchase threshold, except those for which the contracting officer has directed otherwise under [832.7001](#), and those paid with a Governmentwide commercial purchase card.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 833—PROTESTS, DISPUTES, AND APPEALS

(Revised 10/15/18)

Subpart 833.1—Protests

Sec.

833.103-70 Protests to VA.
833.106-70 Solicitation provisions.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.
833.211 Contracting officer's decision.
833.213 Obligation to continue performance.
833.214 Alternative dispute resolution (ADR).
833.215 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; 41 U.S.C. chapter 71; and 48 CFR 1.301-1.304.

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Subpart 833.1—Protests**833.103-70 Protests to VA.**

(a) *Agency protests.* Pursuant to [FAR 33.103\(d\)\(4\)](#), an interested party may protest to the contracting officer or, as an alternative, may request an independent review at a level above the contracting officer as provided in this section. An interested party may also appeal to VA a contracting officer's decision on a protest.

(1) *Protests to the contracting officer.* Protests to the contracting officer shall be in writing and shall be addressed where the offer/bid is to be submitted or as indicated in the solicitation.

(2) *Independent review or appeal of a contracting officer decision—protest filed directly with the agency.*

(i) Protests requesting an independent review a level above the contracting officer, and appeals within VA above the level of the contracting officer, shall be addressed to:

Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (RMCS), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(ii) The protest and pertinent documents shall be mailed to the address in paragraph (a)(2)(i) of this section or sent electronically to: EDProtests@va.gov.

(3) An independent review of a protest filed pursuant to paragraph (a)(2) of this section will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(b) *Agency actions on specific types of protests.* The following types of protests may be dismissed by VA without consideration of the merits or may be forwarded to another agency for appropriate action:

(1) *Contract administration.* Disputes between a contractor and VA are resolved under the disputes clause—see the Dispute statute, 41 U.S.C. chapter 71.

(2) *Small business size standards and standard industrial classification.* Challenges of established size standards, ownership and control or the size status of particular firm, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration (SBA) (see 15 U.S.C. 637(b)(6); 13 CFR 121.1002). Pursuant to Public Law 114-328, SBA will also hear cases related to size, status, and ownership and control challenges under the VA Veterans First Contracting Program (see 38 U.S.C. 8127(f)(8)).

(3) *Small business certificate of competency program.* A protest made under section 8(b)(7) of the Small Business Act, or in regard to any issuance of a certificate of competency or refusal to issue a certificate under that section, is not reviewed in accordance with bid protest procedures unless there is a showing of possible fraud or bad faith on the part of Government officials.

(4) *Protests under section 8(a) of the Small Business Act.* The decision to place or not to place a procurement under the 8(a) program is not subject to review unless there is a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated (see 15 U.S.C. 637(a)).

(5) *Affirmative determination of responsibility by the contracting officer.* An affirmative determination of responsibility will not be reviewed unless there is a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) *Contracts for materials, supplies, articles, and equipment exceeding \$15,000.* Challenges concerning the legal status of a firm as a regular dealer or manufacturer within the meaning of 41 U.S.C. chapter 65 are determined solely by the procuring agency, the SBA (if a small business is involved), and the Secretary of Labor (see [FAR subpart 22.6](#)).

(7) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where VA determines it is in the interest of the Government.

(8) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(c) *Alternative dispute resolution.* Bidders/offerors and VA 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, VA will not furnish any documentation in an ADR proceeding beyond what is allowed by the FAR.

(d) *Appeal of contracting officer's protest decision—agency appellate review.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal in accordance with paragraph (a)(2) of this section.

(1) To be considered timely, the appeal must be received by the cognizant official in paragraph (a)(2) of this section within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal.

(2) Appeals do not extend the Government Accountability Office's (GAO) timeliness requirements for protests to GAO. By filing an appeal as provided in this paragraph (d), an interested party may waive its rights to further protest to the

Comptroller General at a later date.

(3) Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (OGC).

833.106-70 Solicitation provisions.

(a) The contracting officer shall insert the provision at [852.233-70](#), Protest Content/Alternative Dispute Resolution, in solicitations expected to exceed the simplified acquisition threshold, including those for commercial items.

(b) The contracting officer shall insert the provision at [852.233-71](#), Alternate Protest Procedure, in solicitations expected to exceed the simplified acquisition threshold, including those for commercial items.

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

The contracting officer must refer matters relating to suspected fraudulent claims to the Office of Inspector General for investigation and potential referral to the Department of Justice. The contracting officer may not initiate any collection, recovery, or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Office of the Inspector General.

833.211 Contracting officer's decision.

(a) For purposes of appealing a VA contracting officer's final decision, the Board of Contract Appeals referenced in [FAR 33.211\(a\)](#) and elsewhere in this subpart is the Civilian Board of Contract Appeals (CBCA), 1800 F Street, N.W., Washington, DC 20405.

833.213 Obligation to continue performance.

(a) As provided in [FAR 33.213](#), contracting officers shall use [FAR clause 52.233-1](#), Disputes, or with its Alternate I. [FAR clause 52.233-1](#) requires the contractor to continue performance in accordance with the contracting officer's decision in the event of a claim arising *under* a contract. Alternate I expands this authority, adding a requirement for the contractor to continue performance in the event of a claim *relating* to the contract.

(b) In the event of a dispute not arising under, but relating to, the contract, as permitted by [FAR 33.213\(b\)](#), if the contracting officer directs continued performance

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and considers providing financing for such continued performance, the contracting officer shall contact OGC for advice prior to requesting higher level approval for or authorizing such financing. The contracting officer shall document in the contract file any required approvals and how the Government's interest was properly secured with respect to such financing (see [FAR 32.202-4](#) and VAAR subpart [832.2](#)).

833.214 Alternative dispute resolution (ADR).

Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures. Guidance on ADR may be obtained at the U.S. Civilian Board of Contract Appeals website: <https://www.cbca.gov>.

833.215 Contract clauses.

The contracting officer shall use the clause at [52.233-1](#), Disputes, or with its Alternate I (see [833.213](#)).

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 835—RESEARCH AND DEVELOPMENT CONTRACTING

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835.003-70	VA policy.
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835.010	Scientific and technical reports.

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

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PART 835—Research and Development Contracting**835.001-70 Veterans Affairs (VA) definitions.**

Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

Research impropriety refers to noncompliance with the laws, regulations, and policies regarding human subject protections, laboratory animal welfare, research safety, research laboratory security, research information security, and research misconduct. It does not encompass improper procedures or conduct in areas outside of the mandate of the Office of Research Oversight (ORO) (e.g., waste, fraud, abuse, or fiscal mismanagement).

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

VA facility means a component of the VA national health care system, such as a VA Medical Center, VA Health Care System, or VA Medical and Regional Office Center.

835.003-70 VA policy.

(a) Pursuant to 38 U.S.C. 7303, VA is authorized to carry out a program of medical research in connection with the provisions of medical care and treatment to Veterans.

(b) The Office of Research Oversight (ORO) serves as the primary Veterans Health Administration (VHA) office that advises the Under Secretary for Health on all compliance matters related to—

- (1) Human subject protections;
- (2) Laboratory animal welfare;
- (3) Research safety;
- (4) Research laboratory security;
- (5) Research information security;
- (6) Research misconduct; and
- (7) Other research improprieties.

835.003-71 Research misconduct.

The contracting officer shall insert the clause at [852.235-70](#), Research Misconduct, in all research and development (R&D) solicitations and contracts.

835.003-72 Protection of human subjects.

The contracting officer shall insert the clause at [852.235-71](#), Protection of Human Subjects, in all research and development (R&D) solicitations and contracts.

835.003-73 Animal welfare.

The contracting officer shall insert the clause at [852.235-72](#), Animal Welfare, in all research and development (R&D) solicitations and contracts.

835.003-74 Facilities.

If the contracting officer determines that the facilities to be assigned to perform effort on a research and development (R&D) contract are critical to the success of the R&D effort, the contracting officer shall insert the clause at [852.235-73](#), Facilities, in the solicitation and contract.

835.003-75 Acknowledgement of support and disclaimer.

The contracting officer shall insert the clause at [852.235-74](#), Acknowledgement of Support and Disclaimer, in all research and development (R&D) solicitations and contracts.

835.010 Scientific and technical reports.

The contracting officer shall insert the clause at [852.235-75](#), Scientific and Technical Reports, in all research and development (R&D) solicitations and contracts.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

(Revised 4/18/2019)

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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

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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

(Revised 9/30/2019)

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.

Part 836—Construction and Architect-Engineer Contracts

(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 F—SPECIAL CATEGORIES OF CONTRACTING

PART 837—SERVICE CONTRACTING

(Revised 10/4/2019)

Subpart 837.1 – Service Contracts – General

Sec.

837.110-70 VA solicitation provisions and contract clauses.

Supart 837.2—[Reserved]

Subpart 837.4 – Nonpersonal Health Care Services

837.403-70 VA Contract clauses.

Subpart 837.70 – Mortuary Services

837.7000 Policy.

837.7001 Solicitation provisions and contract clauses.

AUTHORITY: Pub. L. 101-647; 20 U.S.C. 7181-7183; 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 F—SPECIAL CATEGORIES OF CONTRACTING**PART 837—SERVICE CONTRACTING****Subpart 837.1—Service Contracts—General****837.110-70 VA Solicitation provisions and contract clauses.**

(a) Contracting officers shall include the clause at [852.237-74](#), Nondiscrimination in Service Delivery, in all solicitations and contracts covering services provided to eligible beneficiaries.

(b) The contracting officer shall insert the clause at [852.237-75](#), Key Personnel, in solicitations and contracts when the contracting officer will require the contractor to designate contractor key personnel.

Subpart 837.2—[Reserved]**Subpart 837.4—Nonpersonal Health Care Services****837.403-70 VA contract clauses.**

(a) The contracting officer shall insert the clause at [852.237-70](#), Indemnification and Medical Liability Insurance, in lieu of [FAR clause 52.237-7](#), in solicitations and contracts for nonpersonal health-care services, including contracts awarded under the authority of 38 U.S.C. 7409, 38 U.S.C. 8151-8153, and part [873](#). The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in [FAR part 13](#) and part [813](#).

(b) The contracting officer shall insert the clause at [852.237-71](#), Nonsmoking Policy for Children's Services, in solicitations, contracts, and orders that involve health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Nonsmoking Policy for Children's Services (20 U.S.C. 6081-6084).

(c) The contracting officer shall insert the clause at [852.237-72](#), Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal land or in a federally operated (or contracted) facility and involve the professions/activities performed by persons specified in the Crime Control Act of 1990 (42 U.S.C. 13031) including, but not limited to, teachers, social workers, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(d) The contracting officer shall insert the clause at [852.237-73](#), Crime Control

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Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (42 U.S.C. 13041).

Subpart 837.70—Mortuary Services**837.7000 Scope.**

This subpart applies to mortuary (funeral and burial) services for beneficiaries of VA as provided in 38 U.S.C. 2302, 2303, and 2308 when it is determined that a contract would be the most efficient and effective method. Contract payment terms for use of the purchase card as a method of payment should also be considered.

837.7001 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the basic or the alternate of the provision at [852.237-76](#), Award to Single Offeror, in solicitations and contracts for mortuary services as follows:

(1) Insert the provision in all sealed bid solicitations for mortuary services; and

(2) Insert the basic provision with its alternate I in all negotiated solicitations and contracts for mortuary services.

(b) The contracting officer shall insert, in addition to [FAR 52.216-21](#), Requirements, the following clauses in all mortuary service solicitations and contracts:

(1) [852.237-77](#), Area of Performance.

(2) [852.237-78](#), Performance and Delivery.

(3) [852.237-79](#), Subcontracting.

(4) [852.237-80](#), Health Department and Transport Permits.

(c) See also [816.506-70](#) and [849.504-70](#) for additional clauses for use in contracts for mortuary services.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 839—ACQUISITION OF INFORMATION TECHNOLOGY

Sec.

839.000 Scope of part.

Subpart 839.1—General

- 839.101 Policy.
- 839.105 Privacy.
- 839.105-70 Business Associate Agreements, information technology-related contracts and privacy.
- 839.105-71 Liquidated damages—protection of information in information technology related contracts.
- 839.106-70 Information security and privacy contract clauses.

Subpart 839.2—Information and Communication Technology

- 839.201 Scope of subpart.
- 839.203 Applicability.
- 839.203-70 Information and communication technology accessibility standards—contract clause and provision.

Authority: 38 U.S.C. 5723-5724, 5725(a)–(c); 40 U.S.C. 121(c), 11319(b)(1)(C); 41 U.S.C. 1121(c)(3), 1303 and 1702; and 48 CFR 1.301 through 1.304.

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839.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring VA information technology and information technology-related contracts (see [802.101](#)) and applies to both VA-procured information technology systems as well as interagency acquisitions defined in FAR part [17](#) and part [817](#).

Subpart 839.1—General**839.101 Policy.**

(a)(1) In acquiring information technology, including information technology-related contracts which may involve services (including support services), and related resources (see the definition at FAR [2.101](#)), contracting officers and requiring activities shall include in solicitations and contracts the requirement to comply with the following directives, policies, and procedures in order to protect VA information, information systems, and information technology—

(i) [VA Directive 6500](#), VA Cybersecurity Program, and the directives and handbooks in the VA 6500 series, to include, but not limited to, [VA Handbook 6500.6](#), Contract Security, which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive orders, policies, regulations, standards, and guidance for protecting and controlling VA sensitive information and ensuring that security requirements are included in acquisitions, solicitations, contracts, purchase orders, and task or delivery orders.

(ii) The VA directives, security requirements, procedures, and guidance in paragraph (a)(1)(i) of this section apply to all VA contracts and to contractors, subcontractors, and their employees in the performance of contractual obligations to VA for information technology products purchased from vendors, as well as for services acquired from contractors and subcontractors or business associates, through contracts and service agreements, in which access to VA information, VA sensitive information or sensitive personal information (including protected health information (PHI))—

(A) That is created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized by VA, a VA contractor, subcontractor, or third-party servicers or associates, or on behalf of any of these entities, in the performance of their contractual obligations to VA; and

(B) By or on behalf of any of the entities identified in this section, regardless of—

(1) Format; or

(2) Whether it resides on a VA or a non-VA system, or with a contractor, subcontractor, or third-party system or electronic information system(s),

Part 839-Acquisition of Information Technology

including cloud services, operating for or on the VA's behalf or as required by contract.

(c) Contractors, subcontractors, and third-party servicers or associates providing support to or on behalf of the entities identified in this section, shall employ adequate security controls and use appropriate common security configurations available from the National Institute of Standards and Technology (see FAR [39.101\(c\)](#)) as appropriate in accordance with VA regulations in this chapter, directives, handbooks, and guidance, and established service level agreements and individual contracts, orders, and agreements. Contractors, subcontractors, and third-party servicers and associates will ensure that VA information or VA sensitive information that resides on a VA system or resides on a contractor/subcontractor/third-party entities/associates information and communication technology (ICT) system(s), operating for or on VA's behalf, or as required by contract, regardless of form or format, whether electronic or manual, and information systems, are protected from unauthorized access, use, disclosure, modification, or destruction to ensure information security (see FAR [2.101](#)) is provided in order to ensure the integrity, confidentiality, and availability of such information and information systems.

839.105 Privacy.**839.105-70 Business Associate Agreements, information technology-related contracts and privacy.**

In accordance with [824.103-70](#), contracting officers and contracting officer representatives (CORs) shall ensure that contractors, their employees, subcontractors, and third-parties under the contract complete Business Associate Agreements for—

(a) Information technology or information technology-related service contracts subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) where HIPAA PHI is created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized in order to perform certain health care operations activities or functions on behalf of the Veterans Health Administration (VHA) as a covered entity (see [802.101](#) for the definition of information technology-related contracts); or

(b) Contractors supporting other VA organizations which support VHA in this regard and which would therefore require Business Associate Agreements in accordance with [824.103-70](#).

839.105-71 Liquidated damages—protection of information in information technology related contracts.

Contracting officers shall insert in information technology related contracts the liquidated damages clause as prescribed at [811.503-70](#).

839.106-70 Information security and privacy contract clauses.

(a) Contracting officers shall insert the clause at [852.239-70](#), Security Requirements for Information Technology Resources, and the clause at [852.239-71](#), Information System Security Plan and Accreditation, in all solicitations, contracts, and orders exceeding the micro-purchase threshold that include information technology services.

(b) Contracting officers shall insert the clause at [852.239-72](#), Information System Design and Development, in solicitations, contracts, orders, and agreements where services to perform information system design and development are required.

(c) Contracting officers shall insert the clause at [852.239-73](#), Information System Hosting, Operation, Maintenance or Use, in solicitations, contracts, orders, and agreements where services to perform information system hosting, operation, maintenance, or use are required.

(d) Contracting officers shall insert the clause at [852.239-74](#), Security Controls Compliance Testing, in solicitations, contracts, orders, and agreements, when the clause at [852.239-72](#) or [852.239-73](#) is inserted.

Subpart 839.2—Information and Communication Technology**839.201 Scope of subpart.**

This subpart applies to the acquisition of Information and Communication Technology (ICT) supplies and services. It concerns the access to and use of information and data by both Federal employees with disabilities and members of the public with disabilities in accordance with FAR [39.201](#). This subpart implements VA policy on section 508 of the Rehabilitation Act of 1973 ([29 U.S.C. 794d](#)) and [36 CFR 1194.1](#) as it applies to contracts and acquisitions when developing, procuring, maintaining, or using ICT.

839.203 Applicability.

(a) *General.* Solicitations for information technology (IT) (*i.e.*, ICT) or IT-related supplies and services shall require the contractor to submit a VA Section 508 Checklist (see <https://www.section508.va.gov/>).

839.203-70 Information and communication technology accessibility standards—contract clause and provision.

(a) The contracting officer shall insert the provision at [852.239-75](#), Information and Communication Technology Accessibility Notice, in all solicitations.

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(b) The contracting officer shall insert the clause at [852.239-76](#), Information and Communication Technology Accessibility, in all contracts and orders.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 841—ACQUISITION OF UTILITY SERVICES

(Revised 10/26/2020)

Subpart 841.1—General

841.102 Applicability.

Subpart 841.2—[Reserved]

Subpart 841.5—Solicitation Provision and Contract Clauses

841.501 Solicitation provision and contract clauses.

841.501-70 Disputes—Utility contracts.

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

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 841—ACQUISITION OF UTILITY SERVICES

Subpart 841.1—General

841.102 Applicability.

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers when a delegation of authority from GSA for those services is requested and obtained.

(b)(4) The acquisition of energy, such as electricity, and natural or manufactured gas, when purchased as a commodity is considered to be acquisitions of supplies rather than utility services as described in [FAR part 41](#).

Subpart 841.2—[Reserved]

Subpart 841.5—Solicitation Provision and Contract Clauses

841.501 Solicitation provision and contract clauses.

841.501-70 Disputes—Utility contracts.

The contracting officer shall insert the clause at [852.241-70](#), Disputes—Utility Contracts, in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES
(Revised 10/26/2020)

Sec.

842.000 Scope of part.
842.070 Definitions.

Subpart 842.1—[Reserved]

Subpart 842.2—Contract Administration Services

842.270 Contracting Officer's Representatives' role in contract administration.
842.271 Administrative Contracting Officer's role in contract administration and delegated functions.
842.272 Contract clause for Government construction contract administration.

Subpart 842.7 – Indirect Cost Rates

842.705 Final indirect cost rates.

Subpart 842.8—[Reserved]

Subpart 842.12—Novation and Change of Name Agreements

842.1202 Responsibility for executing agreements.

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

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SUBCHAPTER G—CONTRACT MANAGEMENT**PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES****842.000 Scope of part.**

This part prescribes policies and procedures for contract administration and audit services for all Department of Veterans Affairs (VA) contracting activities.

842.070 Definitions.

As used in this part—

Contract administration means Government actions taken after contract award to obtain compliance with such contract requirements as timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include, but are not limited to, technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer. It may include additional tasks requested of designated contract administration offices within VA in support of pre-award activities for solicitations issued by or awarded by other contracting activities through Interagency Acquisitions.

Administrative Contracting Officer Letter of Delegation means a delegation of functions as set forth in [FAR 42.202](#), [42.302](#) and [842.271](#), Administrative Contracting Officer's role in contract administration and delegated functions, that is issued by a contracting officer to delegate certain contract administration or specialized support services.

Subpart 842.1—[Reserved]**Subpart 842.2—Contract Administration Services****842.270 Contracting Officer's Representatives' role in contract administration.**

(a) A contracting officer may designate a qualified person to be the Contracting Officer's Representative (COR) for the purpose of performing certain technical functions in administering a contract.

(b) The COR acts solely as a technical representative of the contracting officer and is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract.

(c) A COR designation must be made in writing by the contracting officer. The designation shall identify the responsibilities and limitations of the COR. A copy of the designation must be furnished to the contractor and the Administrative Contracting Officer (ACO), if separately assigned.

842.271 Administrative Contracting Officer's role in contract administration and delegated functions.

(a) Contracting officers are authorized to delegate certain contract administration or specialized support services in accordance with [FAR 42.202](#) and [42.302](#) to cognizant VA administrative contracting officers.

(b) The Administrative Contracting Officer's authority is limited to the actions detailed in the delegation.

(c) These delegations of authority shall be set forth in a written Administrative Contracting Officer (ACO) Letter of Delegation issued by the contracting officer to the accepting contract administration office and designated administrative contracting officer. The ACO Letter of Delegation shall contain the information required in [FAR 42.202\(a\) through \(c\)](#) and identify the responsibilities and limitations of the ACO. A copy of the delegation will be furnished to the contractor and the ACO.

(d) The contracting officer shall insert the clause at [852.242-71](#), Administrative Contracting Officer, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

842.272 Contract clause for Government construction contract administration.

The contracting officer shall insert the clause at [852.242-70](#), Government Construction Contract Administration, in solicitations and contracts for construction expected to exceed the micro-purchase threshold, when contract administration is delegated.

Subpart 842.7—Indirect Cost Rates**842.705 Final indirect cost rates.**

Except when the quick-closeout procedures described in [FAR 42.708](#) are used, contracting officers shall request contract audits on proposed final indirect cost rates and billing rates for use in cost reimbursement and fixed-price incentive contracts as prescribed in [FAR subpart 42.7](#).

Subpart 842.8—[Reserved]**Subpart 842.12—Novation and Change-of-Name Agreements****842.1202 Responsibility for executing agreements.**

To avoid duplication of effort on the part of VA contracting offices in preparing and executing agreements to recognize a change of name or successor in interest

Part 842—Contract Administration and Audit Services

involving multiple contracts issued by VA activities, only one agreement will be prepared and executed between the Government and the parties (transferor and transferee) and will be processed as forth in [FAR 42.1203](#). The Office of Acquisition and Logistics, Risk Management and Compliance Service will, in each case, designate a cognizant HCA responsible for assigning a contracting officer. The designated contracting officer shall be responsible for taking all necessary and appropriate actions with respect to either recognizing or not recognizing a successor in interest or recognizing a change of name agreement and processing and executing the agreements as set forth in VA procedures.

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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 G—CONTRACT MANAGEMENT

PART 844—SUBCONTRACTING POLICIES AND PROCEDURES

(Added 10/18/18)

Subpart 844.2—Consent to Subcontracts

Sec.

844.202-2 Considerations.

Subpart 844.3—Contractors' Purchasing Systems Reviews

844.303 Extent of review.

**Subpart 844.4—Subcontracts for Commercial Items and
Commercial Components**

844.402 Policy requirements.

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

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PART 844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 844.2—Consent to Subcontract

(Added 10/18/2018)

844.202-2 Considerations.

(a)(14) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as being fair, reasonable, and representing the best value to the Government?

Subpart 844.3—Contractors' Purchasing Systems Reviews

844.303 Extent of review.

(f) Policies and procedures pertaining to use of VA-verified Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) and utilization in accordance with subpart [819.70](#) and the Veterans First Contracting Program;

(l) Documentation of commercial item determinations to ensure compliance with the definition of "commercial item" in [FAR 2.101](#); and

(m) For acquisitions involving electronic parts, that the contractor has implemented a counterfeit electronic part detection and avoidance system to ensure that counterfeit electronic parts do not enter the supply chain.

Subpart 844.4—Subcontracts for Commercial Items and Commercial Components

844.402 Policy requirements.

(a)(3) Determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer's responsibilities or determinations made under [FAR 15.403-1\(c\)\(3\)](#).

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 845—GOVERNMENT PROPERTY

(Added 10/18/18)

Subpart 845.4—Title to Government Property

Sec.

845.402 Title to contractor-acquired property.

845.402-70 Policy.

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

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PART 845—GOVERNMENT PROPERTY

Subpart 845.4—Title to Government Property
(Added 10/18/2018)

845.402 Title to contractor-acquired property.

845.402-70 Policy.

(a) For other than firm-fixed-price contracts, contractor-acquired property items not anticipated at time of contract award, or not otherwise specified for delivery on an existing line item, shall, by means of a contract modification, be specified for delivery to the Government on a contract line item. The value of such contractor-acquired property item shall be recorded at the original purchase cost. Unless otherwise noted by the contractor at the time of delivery to the Government, the placed-in-service date shall be the date of acquisition or completed manufacture, if fabricated.

(b) Following delivery and acceptance by the Government of contractor-acquired property items, if these items are to be retained by the contractor for continued use under a successor contract, these items become Government-furnished property (GFP). The items shall be added to the successor contract as GFP by contract modification.

(c) Individual contractor-acquired property items should be recorded in the contractor's property management system at the contractor's original purchase cost.

(d) All other contractor inventory that is excess to the needs of the contract shall be disposed of in accordance with [FAR subpart 45.6](#).

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 846—QUALITY ASSURANCE

(Revised 10/24/18)

Subpart 846.1—General

Sec.

846.101 Definition.

Subpart 846.3—Contract Clauses

846.370 Clauses for supplies, equipment or perishable goods.
846.370-1 Rejected goods.
846.370-2 Frozen processed foods.
846.370-3 Noncompliance with packaging, packing and/or marking requirements.
846.370-4 Purchase of shellfish.

Subpart 846.4—Government Contract Quality Assurance

846.408-70 Inspection of subsistence.
846.470 Use of commercial organizations for inspections and grading services.
846.471 Food service equipment.

Subpart 846.7—Warranties

846.702-70 Guarantee period services and specifications.

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

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 846—QUALITY ASSURANCE

Subpart 846.1—General

846.101 Definition.

As used in this part—

Rejected goods means supplies and/or equipment failing to meet contractual terms and conditions and/or generally accepted quality standards that may be returned by the Government at the contractor's risk and expense.

Subpart 846.3—Contract Clauses

846.370 Clauses for supplies, equipment or perishable goods.

846.370-1 Rejected goods.

The contracting officer shall insert the clause at [852.246-71](#), Rejected Goods, in solicitations and contracts for the acquisition of supplies, equipment or perishable goods. Perishable goods include such items as packing house and dairy products, bread and bakery products, fresh and frozen fruits, and vegetables.

846.370-2 Frozen processed foods.

(a) The contracting officer shall insert the clause at [852.246-72](#), Frozen Processed Foods, in solicitations and contracts for frozen processed foods.

(b) The following frozen processed food products must contain a label that complies with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), which requires all ingredients be listed in accordance with their predominance order:

(1) Frozen processed food products that contain meat, poultry, or a significant proportion of eggs.

(2) Frozen processed food products that contain fish or fish products.

(3) Frozen bakery products.

(c) All procured frozen processed food products that contain meat, poultry or a significant proportion of eggs must meet the following requirements:

(1) The products must be processed or prepared in plants operating under the supervision of the Department of Agriculture (USDA).

(2) The product must be inspected and approved in accordance with USDA regulations governing meat, poultry, or egg inspection. A label or seal that indicates compliance with USDA regulations, affixed to the container, will be accepted as evidence of compliance.

(d) All procured frozen processed food products that contain fish or fish products must meet the following requirements:

(1) The product must be processed or prepared in plants or vessels, sanitarily inspected, approved, and certified by the United States Department of Commerce (USDC). The products are listed in USDC's publication "USDC Approved Establishments" under U.S. Establishments Approved for Sanitation and for Producing USDC Inspected Fishery Products. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal indicating compliance with USDC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the conditions in paragraph (d)(1) of this section were not met (e.g., no seal), the shipment may be lot-inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(e) Producers of frozen bakery products that ship products in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, the product must be verified as shipped interstate or that the producer ships products to other purchasers interstate.

846.370-3 Noncompliance with packaging, packing and/or marking requirements.

The contracting officer shall insert the clause at [852.246-73](#), Noncompliance with Packaging, Packing, and/or Marking Requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with [FAR 12.302\(c\)](#).

846.370-4 Purchase of shellfish.

(a) The U.S. Food and Drug Administration (FDA) at <http://www.fda.gov> provides quality assurance seafood safety guidelines.

(b) The contracting officer shall insert the clause at [852.246-76](#), Purchase of Shellfish, in solicitations and contracts for shellfish.

Subpart 846.4—Government Contract Quality Assurance**846.408-70 Inspection of subsistence.**

(a) The contracting officer shall indicate the time and place of inspection in the solicitation.

(b) The contracting office shall also provide in the solicitation that the contractor is responsible for all of the following:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.

(3) Assuring that the certificate, or copy, accompanies the shipment.

(4) Furnishing samples for inspection at the contractor's expense.

(5) Indicating the address where inspection will occur.

(c) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

846.470 Use of commercial organizations for inspections and grading services.

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following exist:

(a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.

(b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(c) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(d) The services may be performed without direct Government supervision.

846.471 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center sources must meet requirements set forth by NSF International (NSF) at <http://www.nsf.org>.

(b) The contracting officer will ensure that the following language is placed in the solicitation to assert that the equipment meets NSF standards:

The Government will accept an affixed NSF label and/or documentation of the NSF Certification from the contractor as evidence that the subject equipment meets NSF Sanitation standards.

Subpart 846.7—Warranties

846.702-70 Guarantee period services and specifications.

(a) Guarantee period of services are associated with preserving and protecting a specified piece of contractor-installed equipment that is guaranteed under a construction contract. Specifications for certain high-dollar or traditionally troublesome equipment are designed to allow for the original installer of the equipment to service the equipment throughout the guaranty period.

(b) Guarantee period services are not the same as the 1-year general construction guaranty clause found at [FAR clause 52.246-21](#), Warranty of Construction.

(c) The contracting officer may determine, when in the best interest of VA that guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and ensure that the equipment performs as guaranteed.

(d) When the determination is made under paragraph (c) of this section, the contracting officer shall include the guarantee period of services as a separately priced line item number (CLIN) in solicitations and contracts.

(e) The contracting officer shall insert the clause at [852.246-75](#), Warranty of Construction—Guarantee Period Services, in solicitations and contracts for construction that include the [FAR clause 52.246-21](#), Warranty of Construction, and

that also include guarantee period services.

(f) In accordance with the approved VA specifications, the following types of equipment contain the guarantee period services specifications. The following represents a sampling of these specifications.

(1) *Division 14—Conveying Equipment.*

- (i) Electric Dumbwaiters Geared Traction and Winding Drum (VA 14 1211).
- (ii) Electric Traction Elevators (VA 14 21 00).
- (iii) Traction Cartlift (VA 14 21 11).
- (iv) Hydraulic Elevators (VA 14 24 00).
- (v) Hydraulic Cartlift (VA 14 24 11).

(2) *Division 27—Communications.*

- (i) Public Address and Mass Notification Systems (VA 27 51 16).
- (ii) Intercommunication and Program Systems (VA 27 51 23).

(g) The construction contractor shall require the original installer of the equipment, which is normally a subcontractor, to provide the guarantee period services.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 847—TRANSPORTATION

(Revised 10/24/18)

Subpart 847.2— Contracts for Transportation or for Transportation-Related Services

Sec.

- 847.207 Solicitation provisions, contract clauses, and special requirements.
- 847.207-8 Government responsibilities.
- 847.207-70 VA solicitation provisions, contract clauses, and special requirements.

Subpart 847.3—Transportation in Supply Contracts

- 847.302 Place of delivery—f.o.b. point.
- 847.303-17 Contractor-prepaid commercial bills of lading, small package shipments.
- 847.305 Solicitation provisions, contract clauses, and transportation factors.
- 847.305-10 Packing, marking, and consignment instructions.
- 847.305-70 Potential destinations known but quantities unknown.
- 847.305-71 VA contract clauses.
- 847.306 Transportation factors in the evaluation of offers.
- 847.306-70 Records of claims.

AUTHORITY: 38 U.S.C. 513; 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 CFR 102-117; and 48 CFR 1.301-1.304.

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SUBCHAPTER G—CONTRACT MANAGEMENT**PART 847—TRANSPORTATION****Subpart 847.2—Contracts for Transportation or for Transportation-Related Services****847.207 Solicitation provisions, contract clauses, and special requirements.****847.207-8 Government responsibilities.**

Transportation payments are audited by the Traffic Manager, to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR part 102-118.

847.207-70 VA solicitation provisions, contract clauses, and special requirements.

(a) *Insurance under patient transportation contracts.* The contracting officer shall ensure that all the proper certificates of insurance are submitted to perform on the contract, as outlined in the solicitation, and subsequently included in the contract file. In accordance with [828.306](#), the contracting officer shall insert the provision at [852.228-71](#), Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service. When contracting for these services, consider using requirements language such as the following:

(1) Written proof of insurance coverage as required and outlined in the solicitation is required prior to award of any contract. Coverage must be maintained continually through the life of the contract.

(2) Within 10 days of notification of acceptance and pending award of contract, the contractor shall furnish to the contracting officer a certificate of insurance which shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day advance written notice of cancellation or change is furnished to the contracting officer.

(3) Within 10 days of notification of acceptance and pending award of contract, and prior to award of a contract, the contractor shall furnish to the contracting officer a copy of the contractor's current and valid Worker's Compensation certificate.

(b) *Contractor personnel.* The contracting officer shall ensure that contractor

Part 847—Transportation

personnel have the appropriate level of training, experience, licensure, and pertinent qualifications to ensure patient safety. When contracting for these services, consider using requirements language such as the following:

(1) All contractor personnel performing contract services shall meet the qualifications as specified in the contract, as well as any qualifications required by Federal, State, County, and local Government entities from the place in which they operate. Contractor personnel shall meet these qualifications at all times while performing contract services.

(2) During the contract period of performance, if the contractor proposes to add-on, or replace personnel to perform contract services, the contractor shall submit required evidence of training, certifications, licensing, background, and security clearances, and any other applicable qualifications to the designated contracting officer's representative (COR). At no time shall the contractor utilize add-on or replacement personnel to perform contract services who do not meet the qualifications under the terms and conditions of the contract.

(3) Records of contractor personnel qualifications and eligibility to perform on the contract must be current and maintained throughout the life of the contract, and be made available for inspection upon request. The contractor shall forward to the contracting officer, on an annual basis, a list of contractor employees listing the employee's name, position(s), and licenses and/or certifications and their current certification number. This annual statement of driver competency must include any advanced certifications, such as Advanced Cardiac Life Support or specialized training to assist and secure patients by stretcher or wheelchair, as applicable.

(4) Within seven (7) days after receipt of award notification, the contractor shall provide evidence of required training, certifications, licensing and any other qualifications of any personnel who will be performing services under the contract. The initial documentation shall be provided to the contracting officer and COR.

(c) Contracts must include requirements to report vehicle accidents and incidents to the contracting officer with a formal accident report.

(d) Contracts for ambulance services must require that the contractor meet the current specifications of Federal Specification KKK-A-1822E, "Star of Life Ambulance" standard.

(e) Contracts must include requirements to ensure patient safety is maintained through the consistent practice of securing patient care equipment, other cargo, and vehicles, and ensure that security of patients in vehicles is established and observed when transportation needs are either primary or secondary in the actual performance of the contract. When contracting for these services, consider using requirements language to ensure that patient transportation meets industry standards for transporting patients based on the patient's condition/needs, (e.g., wheelchair,

ambulatory, on stretcher, etc.).

Subpart 847.3—Transportation in Supply Contracts

847.302 Place of delivery—f.o.b. point.

The contracting officer shall insert clause [852.247-71](#), Delivery Location, or a clause substantially the same as the clause at [852.247-71](#), Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

[Deviation per [Class Deviation](#) from VAAR parts 803, 819, 827, 847, and 849 Regarding Certified Mail Receipt Requested and Mail Requirements, dated September 28, 2020, provides an exception to certified mail receipt requested and mail requirements. This deviation expires once incorporated into the VAAR or is otherwise rescinded.]

847.303-17 Contractor-prepaid commercial bills of lading, small package shipments.

(b) When consolidation is authorized, a copy of the commercial bill of lading shall be mailed, electronically mailed, or otherwise furnished promptly to each consignee.]

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305-10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert clause [852.247-72](#), Marking Deliverables, or a clause substantially the same as the clause at [852.247-72](#) in solicitations and contracts if special marking on deliverables are required.

(b) The contracting officer shall insert the clause at [852.247-73](#), Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

847.305-70 Potential destinations known but quantities unknown.

When the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an f.o.b. origin basis, the evaluation of bids must follow specific procedures. In these instances, the contracting officer shall insert clause [852.247-70](#), Determining Transportation Costs for Evaluation of Offers, or a clause substantially the same as clause [852.247-70](#). By inserting this clause, each bid is

Part 847—Transportation

placed on an equal basis, even though specific quantities required by each facility cannot be predetermined. The contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload.

847.305-71 VA contract clauses.

(a) The contracting officer shall insert clause [852.247-74](#), Advance Notice of Shipment, or a clause substantially the same as clause [852.247-74](#), in solicitations and contracts when the f.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert clause [852.247-75](#), Bills of Lading, or a clause substantially the same as clause at [852.247-75](#), in f.o.b. origin solicitations and contracts.

847.306 Transportation factors in the evaluation of offers.**847.306-70 Records of claims.**

When contracting for transportation, and consistent with [FAR 15.304](#), contracting officers should consider using offerors' record of claims involving loss or damage as an evaluation factor or subfactor.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 849—TERMINATION OF CONTRACTS
(Revised 7/16/2020)

Subpart 849.1—General Principles

- 849.102 Notice of termination.
- 849.109 Settlement agreements.

Subpart 849.5—Contract Termination Clauses

- Sec.
849.504 Termination of fixed-price contracts for default.
- 849.504-70 Termination of mortuary services.

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

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 849—TERMINATION OF CONTRACTS

[Deviation per [Class Deviation](#) from VAAR parts 803, 819, 827, 847, and 849 Regarding Certified Mail Receipt Requested and Mail Requirements, dated September 28, 2020, provides an exception to certified mail receipt requested and mail requirements. This deviation expires once incorporated into the VAAR or is otherwise rescinded.]

Subpart 849.1—General Principles

849.102 Notice of termination.

(a) *General.* The notice shall be sent by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

849.109 Settlement agreements.

849.109-7 Settlement by determination.

(b) *Notice to contractor.* The TCO notice shall be sent by certified mail (return receipt requested), or any other method that provides evidence of receipt.

Subpart 849.5—Contract Termination Clauses

849.504 Termination of fixed-price contracts for default.

849.504-70 Termination of mortuary services.

Use the clause at [852.249-70](#), Termination for Default—Supplement for Mortuary Services, in all solicitations and contracts for mortuary services. This clause is to be used with the [FAR clause 52.249-8](#), Default (Fixed-Price Supply and Service).

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SUBCHAPTER H—CLAUSES AND FORMS**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****Subpart 852.1—Instructions for Using Provisions and Clauses**
*(Revised 11/1/2021)***Sec.**

- 852.101-70 Using part 852.
852.102 Incorporating provisions and clauses.

Subpart 852.2—Text of Provisions and Clauses
(Revised 2/16/23 and 2/24/2023)

- 852.201-70 Contracting Officer's Representative.
852.203-70 Commercial Advertising.
852.203-71 [Reserved]
852.204-70 Personal Identity Verification of Contractor Personnel.
852.204-71 Information and Information Systems Security.
852.208-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.
852.208-71 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs.
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]
852.211-76 Liquidated Damages—Reimbursement for Data Breach Costs.
852.212-70 [Reserved]
852.212-71 Gray Market and Counterfeit Items.
852.212-72 Gray Market and Counterfeit Items—Information Technology Maintenance Allowing Other Than New Parts.
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 Marking of Bid Samples.
852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.
852.215-71 Evaluation Factor Commitments.
852.215-72 Notice of Intent to Re-Solicit.

Part 852—Solicitation Provisions and Contract Clauses

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.
852.216-76	Requirements—Supplement for Mortuary Services.
852.217-70	Contract Action Definitization.
852.219-70	VA Small Business Subcontracting Plan Minimum Requirements.
852.219-71	Notification of Competition Limited to Eligible 8(a) Participants.
852.219-72	Notification of Section 8(a) Direct Award.
852.219-73	VA Notice of Total Set-Aside for Certified Service-Disabled Veteran-Owned Small Businesses.
852.219-74	VA Notice of Total Set-Aside for Certified Veteran-Owned Small Businesses.
852.219-75	VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.
852.219-76	VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.
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.
852.235-70	Research Misconduct.
852.235-71	Protection of Human Subjects.
852.235-72	Animal Welfare.
852.235-73	Facilities.
852.235-74	Acknowledgement of Support and Disclaimer.
852.235-75	Scientific and Technical Reports.

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]
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.
852.237-70	Indemnification and Medical Liability Insurance.
852.237-71	Nonsmoking Policy for Children’s Services.
852.237-72	Crime Control Act—Reporting of Child Abuse.
852.237-73	Crime Control Act—Requirement for Background Checks.
852.237-74	Non-Discrimination in Service Delivery.
852.237-75	Key Personnel.
852.237-76	Award to Single Offeror.
852.237-77	Area of Performance.
852.237-78	Performance and Delivery.
852.237-79	Subcontracting.
852.237-80	Health Department and Transport Permits.
852.239-70	Security Requirements for Information Technology Resources.
852.239-71	Information System Security Plan and Accreditation.
852.239-72	Information System Design and Development.
852.239-73	Information System Hosting, Operation, Maintenance, or Use.
852.239-74	Security Controls Compliance Testing.
852.239-75	Information and Communication Technology Accessibility Notice.
852.239-76	Information and Communication Technology Accessibility.
852.241-70	Disputes—Utility Contracts.
852.242-70	Government Construction Contract Administration.
852.242-71	Administrative Contracting Officer.
852.243-70	Construction Contract Changes—Supplement.
852.246-70	[Reserved]

Part 852—Solicitation Provisions and Contract Clauses

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.
852.249-70	Termination for Default—Supplement for Mortuary Services.
852.252-70	Solicitation Provisions or Clauses Incorporated by Reference.
852.270-2	[Reserved]
852.270-3	[Reserved]
852.271-70	[Reserved]
852.271-71	[Reserved]
852.271-72	Time Spent by Counselor in Counseling Process.
852.271-73	Use and Publication of Counseling Results.
852.271-74	Inspection of Instruction, Counseling or Testing Operations.
852.271-75	[Reserved]
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 through 1.304.

Subpart 852.1—Instructions for Using Provisions and Clauses**852.101-70 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.

(c) If 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:
<https://www.acquisition.gov/browse/index/far>.

(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:
<https://www.acquisition.gov/vaar>.

Subpart 852.2—Text of Provisions and Clauses

852.201-1 Contracting Officer’s Representative.

As prescribed in [801.604](#), insert the following provision:

CONTRACTING OFFICER’S REPRESENTATIVE (DEC 2022)

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)

852.203-70 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]

852.204-70 Personal Identity Verification of Contractor Personnel.

As prescribed in [804.1303](#), insert the following clause:

**PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL
(MAY 2020)**

(a) The Contractor shall comply with current Department of Veterans Affairs policy for personal identity verification of all employees performing under this contract when frequent and continuing access to VA facilities or information systems is required.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to VA facilities or information systems.

(End of clause)

852.204-71 Information and Information Systems Security.

As prescribed in [804.1903](#), insert the following clause:

INFORMATION AND INFORMATION SYSTEMS SECURITY (FEB 2023)

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

Business Associate means an entity, including an individual (other than a member of the workforce of a covered entity), company, organization or another covered entity, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, that performs or assists in the performance of a function or activity on behalf of the Veterans Health Administration (VHA) that involves the creating, receiving, maintaining, transmitting of, or having access to, protected health information (PHI). The term also includes a subcontractor of a business associate that creates, receives, maintains, or transmits PHI on behalf of the business associate.

Business Associate Agreement (BAA) means the agreement, as dictated by the Privacy Rule, between VHA and a business associate, which must be entered into in addition to the underlying contract for services and before any release of PHI can be made to the business associate, in order for the business associate to perform certain functions or activities on behalf of VHA.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information whether automated or manual.

Information technology (see FAR [2.101](#)) also means Information and Communication Technology (ICT).

Information technology-related contracts means those contracts which include services (including support services), and related resources for information

technology as defined in [802.101](#).

Privacy officer means the VA official with responsibility for implementing and oversight of privacy related policies and practices that impact a given VA acquisition.

Sensitive personal information means, with respect to an individual, any information about the individual maintained by VA, including but not limited to the following:

(1) Education, financial transactions, medical history, and criminal or employment history.

(2) Information that can be used to distinguish or trace the individual's identity, including but not limited to name, social security number, date and place of birth, mother's maiden name, or biometric records.

Security plan means a formal document that provides an overview of the security requirements for an information system or an information security program and describes the security controls in place or planned for meeting those requirements.

VA Information Security Rules of Behavior for Organizational Users (VA National Rules of Behavior) means a set of VA rules that describes the responsibilities and expected behavior of users of VA information or information systems.

VA sensitive information means all VA data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information and includes sensitive personal information. The term includes information where improper use or disclosure could adversely affect the ability of VA to accomplish its mission, proprietary information, records about individuals requiring protection under various confidentiality provisions such as the Privacy Act and the HIPAA Privacy Rule, and information that can be withheld under the Freedom of Information Act. Examples of VA sensitive information include the following: individually-identifiable medical, benefits, and personnel information; financial, budgetary, research, quality assurance, confidential commercial, critical infrastructure, investigatory, and law enforcement information; information that is confidential and privileged in litigation such as information protected by the deliberative process privilege, attorney work-product privilege, and the attorney-client privilege; and other information which, if released, could result in violation of law or harm or unfairness to any individual or group, or could adversely affect the national interest or the

conduct of Federal programs.

(b) *General.* Contractors, subcontractors, their employees, third-parties, and business associates with access to VA information, information systems, or information technology (IT) or providing and accessing IT-related goods and services, shall adhere to [VA Directive 6500](#), VA Cybersecurity Program, and the directives and handbooks in the VA 6500 series related to VA information (including VA sensitive information and sensitive personal information and information systems security and privacy), as well as those set forth in the contract specifications, statement of work, or performance work statement. These include, but are not limited to, [VA Handbook 6500.6](#), Contract Security; and VA [Directive and Handbook 0710](#), *Personnel Security and Suitability Program*, which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive Orders, policies, regulations, standards and guidance for protecting VA information, information systems (see [802.101](#), Definitions) security and privacy, and adhering to personnel security requirements when accessing VA information or information systems.

(c) *Access to VA information and VA information systems.* (1) Contractors are limited in their request for logical or physical access to VA information or VA information systems for their employees, subcontractors, third parties and business associates to the extent necessary to perform the services or provide the goods as specified in the contracts, agreements, task, delivery or purchase orders.

(2) All Contractors, subcontractors, third parties, and business associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors to access VA information and VA information systems shall be in accordance with VA [Directive](#) and [Handbook 0710](#), *Personnel Security and Suitability Program*.

(3) Contractors, subcontractors, third parties, and business associates who require access to national security programs must have a valid security clearance.

(4) HIPAA Business Associate Agreement requirement. Contractors shall enter into a Business Associate Agreement (BAA) with VHA, VA's Covered Entity, when contract requirements and access to protected health information is required and when requested by the Contracting Officer, or the Contracting Officer's Representative (COR) (see VAAR [824.103-70](#)). Under the HIPAA Privacy and Security Rules, a Covered Entity (VHA) must have a satisfactory assurance that its PHI will be safeguarded from misuse. To do so, a Covered Entity enters into a BAA with a contractor (now the business associate), which obligates the business associate to only use the Covered Entity's PHI for the purposes for which it was engaged, provide the same protections and safeguards as is required from the

Covered Entity, and agree to the same disclosure restrictions to PHI that is required of the Covered Entity in situations where a contractor—

(i) Creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain health care operations activities or functions on behalf of the Covered Entity; or

(ii) Provides one or more of the services specified in the Privacy Rule to or for the Covered Entity.

(A) *Contractors or entities required to execute BAAs for contracts and other agreements become VHA business associates.* BAAs are issued by VHA or may be issued by other VA programs in support of VHA. The HIPAA Privacy Rule requires VHA to execute compliant BAAs with persons or entities that create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI in order to perform certain activities, functions or services to, for, or on behalf of VHA. There may be other VA components or staff offices which also provide certain services and support to VHA and must receive PHI in order to do so. If these components award contracts or enter into other agreements, purchase/delivery orders, modifications and issue governmentwide purchase card transactions to help in the delivery of these services to VHA, they will also fall within the requirement to obtain a satisfactory assurance from these contractors by executing a BAA.

(B) *BAA requirement flow down to subcontractors.* A prime Contractor required to execute a BAA shall also obtain a satisfactory assurance, in the form of a BAA, that any of its subcontractors who will also create, receive, maintain, or transmit VHA PHI or that will store, generate, access, exchange, process, or utilize such PHI will comply with HIPAA requirements to the same degree as the Contractor. Contractors employing a subcontractor who creates, receives, maintains, or transmits VHA PHI or that will store, generate, access, exchange, process, or utilize such VHA PHI under a contract or agreement is required to execute a BAA with each of its subcontractors which also obligates the subcontractor (i.e., also a business associate) to provide the same protections and safeguards and agree to the same disclosure restrictions to VHA's PHI that is required of the Covered Entity and the prime Contractor.

(d) *Contractor operations required to be in United States.* Custom software development and outsourced operations must be located in the U.S. to the maximum extent practicable. If such services are proposed to be performed outside the continental United States, and are not otherwise disallowed by other Federal law, regulations or policy, or other VA policy or other mandates as stated in the contract, specifications, statement of work or performance work statement (including applicable Business Associate Agreements), the Contractor/

subcontractor must state in its proposal where all non-U.S. services are provided. At a minimum, the Contractor/subcontractor must include a detailed Information Technology Security Plan, for review and approval by the Contracting Officer, specifically to address mitigation of the resulting problems of communication, control, and data protection.

(e) *Contractor/subcontractor employee reassignment and termination notification.* Contractors and subcontractors shall provide written notification to the Contracting Officer and Contracting Officer's Representative (COR) immediately, and not later than four (4) hours, when an employee working on a VA information system or with access to VA information is reassigned or leaves the Contractor or subcontractor's employment on the cognizant VA contract. The Contracting Officer and COR must also be notified immediately by the Contractor or subcontractor prior to an unfriendly termination.

(f) *VA information custodial requirements.* (1) *Release, publication, and use of data.* Information made available to a Contractor or subcontractor by VA for the performance or administration of a contract or information developed by the Contractor/subcontractor in performance or administration of a contract shall be used only for the stated contract purpose and shall not be used in any other way without VA's prior written approval. This clause expressly limits the Contractor's/subcontractor's rights to use data as described in Rights in Data—General, FAR [52.227-14\(d\)](#).

(2) *Media sanitization.* VA information shall not be co-mingled with any other data on the Contractors/subcontractor's information systems or media storage systems in order to ensure federal and VA requirements related to data protection, information segregation, classification requirements, and media sanitization can be met (see [VA Directive 6500](#), VA Cybersecurity Program). VA reserves the right to conduct scheduled or unscheduled on-site inspections, assessments, or audits of Contractor and subcontractor IT resources, information systems and assets to ensure data security and privacy controls, separation of data and job duties, and destruction/media sanitization procedures are in compliance with Federal and VA requirements. The Contractor and subcontractor will provide all necessary access and support to VA and/or GAO staff during periodic control assessments or audits.

(3) *Data retention, destruction, and contractor self-certification.* The Contractor and its subcontractors are responsible for collecting and destroying any VA data provided, created, or stored under the terms of this contract, to a point where VA data or materials are no longer readable or reconstructable to any degree, in accordance with [VA Directive 6371](#), Destruction of Temporary Paper Records, or subsequent issue. Prior to termination or completion of this contract, the Contractor/subcontractor must provide its plan for destruction of all VA data in its possession according to [VA Directive 6500](#), and VA Cybersecurity Program, including compliance with National Institute of Standards and Technology (NIST) 800-88, Guidelines for Media Sanitization, for the purposes of media sanitization on

all IT equipment. The Contractor must certify in writing to the Contracting Officer within 30 days of termination of the contract that the data destruction requirements in this paragraph have been met.

(4) *Return of VA data and information.* When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to the VA (as stipulated by the Contracting Officer or the COR) or the Contractor/subcontractor must hold it until otherwise directed. Items returned will be hand carried, securely mailed, emailed, or securely electronically transmitted to the Contracting Officer or to the address as provided in the contract or by the assigned COR, and/or accompanying BAA. Depending on the method of return, Contractor/subcontractor must store, transport, or transmit VA sensitive information, when permitted by the contract using VA-approved encryption tools that are, at a minimum, validated under Federal Information Processing Standards (FIPS) 140-3 (or its successor). If mailed, Contractor/subcontractor must send via a trackable method (USPS, UPS, Federal Express, etc.) and immediately provide the Contracting Officer with the tracking information. No information, data, documentary material, records or equipment will be destroyed unless done in accordance with the terms of this contract and the VHA Records Control Schedule 10-1.

(5) *Use of VA data and information.* The Contractor/subcontractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security laws, regulations and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if the National NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies for this contract as a result of any updates, if required.

(6) *Copying VA data or information.* The Contractor/subcontractor shall not make copies of VA information except as authorized and necessary to perform the terms of the contract or to preserve electronic information stored on Contractor/subcontractor electronic storage media for restoration in case any electronic equipment or data used by the Contractor/subcontractor needs to be restored to an operating state. If copies are made for restoration purposes, after the restoration is complete, the copies must be appropriately destroyed.

(7) *Violation of information custodial requirements.* If VA determines that the Contractor has violated any of VA's information confidentiality, privacy, or security provisions, it shall be sufficient grounds for VA to withhold payment to the Contractor or third-party or terminate the contract for default in accordance with FAR part [49](#) or terminate for cause in accordance with FAR [12.403](#).

(8) *Encryption.* The Contractor/subcontractor must store, transport, or transmit VA sensitive information, when permitted by the contract, using cryptography, and VA-approved encryption tools that are, at a minimum, validated under FIPS 140-3 (or its successor).

(9) *Firewall and web services security controls.* The Contractor/subcontractor's firewall and web services security controls, if applicable, shall meet or exceed VA's minimum requirements. VA Configuration Guidelines are available upon request.

(10) *Disclosure of VA data and information.* Except for uses and disclosures of VA information authorized in a cognizant contract for performance of the contract, the Contractor/subcontractor may use and disclose VA information only in two other situations: (i) subject to paragraph (f)(10) of this section, in response to a court order from a court of competent jurisdiction, or (ii) with VA's prior written approval. The Contractor/subcontractor must refer all requests for, demands for production of, or inquiries about, VA information and information systems to the Contracting Officer for response. If the Contractor/subcontractor is in receipt of a court order or other request or believes it has a legal requirement to disclose VA information, that Contractor/subcontractor shall immediately refer such court order or other request to the Contracting Officer for response. If the Contractor or subcontractor discloses information on behalf of VHA, the Contractor and/or subcontractor must maintain an accounting of disclosures. Accounting of Disclosures documentation maintained by the Contractor/subcontractor will include the name of the individual to whom the information pertains, the date of each disclosure, the nature or description of the information disclosed, a brief statement of the purpose of each disclosure or, in lieu of such statement, a copy of a written request for a disclosure, and the name and address of the person or agency to whom the disclosure was made. The Contractor/subcontractor will provide its Accounting of Disclosures upon request and within 15 calendar days to the assigned COR and Privacy Officer. Accounting of disclosures should be provided electronically via encrypted email to the COR and designated VA facility Privacy Officer as provided in the contract, BAA, or by the Contracting Officer. If providing the Accounting of Disclosures electronically cannot be done securely, the Contractor/subcontractor will provide copies via trackable methods (UPS, USPS, Federal Express, etc.) immediately, providing the designated COR and Privacy Officer with the tracking information.

(11) *Compliance with privacy statutes and applicable regulations.* The Contractor/subcontractor shall not disclose VA information protected by any of VA's privacy statutes or applicable regulations including but not limited to: the Privacy Act of 1974, [38 U.S.C. 5701](#), confidential nature of claims, [38 U.S.C. 5705](#), confidentiality of medical quality assurance records and/or [38 U.S.C. 7332](#), confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency

virus or the HIPAA Privacy Rule. If the Contractor/subcontractor is in receipt of a court order or other requests for VA information or has questions if it can disclose information protected under the above-mentioned confidentiality statutes because it is required by law, that Contractor/subcontractor shall immediately refer such court order or other request to the Contracting Officer for response.

(g) *Report of known or suspected security/privacy incident.* The Contractor, subcontractor, third-party affiliate or business associate, and its employees shall notify VA immediately via the Contracting Officer and the COR or within one (1) hour of an incident which is an occurrence (including the discovery or disclosure of successful exploits of system vulnerability) that (A) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or the availability of its data and operations, or of its information or information system(s); or (B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies. The initial notification may first be made verbally but must be followed up in writing within one (1) hour. See VA Data Breach Response Service at https://www.oprm.va.gov/dbrs/about_dbrs.aspx. Report all actual or suspected security/privacy incidents and report the information to the Contracting Officer and the COR as identified in the contract or as directed in the contract, within one hour of discovery or suspicion.

(1) Such issues shall be remediated as quickly as is practical, but in no event longer than _____ days [*Fill in: Contracting Officer fills in the number of days*]. The Contractor shall notify the Contracting Officer in writing.

(2) When the security fixes involve installing third party patched (e.g., Microsoft OS patches or Adobe Acrobat), the Contractor will provide written notice to VA that the patch has been validated as not affecting the systems within 10 working days. When the Contractor is responsible for operations or maintenance of the systems, they shall apply the security fixes within ____ [*Fill in: Contracting Officer fills in the number of days in consultation with requiring activity*].

(3) All other vulnerabilities shall be remediated in a timely manner based on risk, but within 60 days of discovery or disclosure. Contractors shall notify the Contracting Officer, and COR within 2 business days after remediation of the identified vulnerability. Exceptions to this paragraph (e.g., for the convenience of VA) must be requested by the Contractor through the COR and shall only be granted with approval of the Contracting Officer and the VA Assistant Secretary for Office of Information and Technology. These exceptions will be tracked by the Contractor in concert with the Government in accordance with [VA Directive 6500](#) and related VA Handbooks.

(h) *Security and privacy incident investigation.* (1) The term “privacy incident” means the unauthorized disclosure or use of VA information protected under a confidentiality statute or regulation.

(2) The term "security incident" means an occurrence that (A) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information systems; or (B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable policies. The Contractor/ subcontractor shall immediately notify the Contracting Officer and COR for the contract of any known or suspected security or privacy incident, or any other unauthorized disclosure of sensitive information, including that contained in system(s) to which the Contractor/subcontractor has access.

(3) To the extent known by the Contractor/subcontractor, the Contractor/ subcontractor's notice to VA shall identify the information involved, the circumstances surrounding the incident (including to whom, how, when, and where the VA information or assets were placed at risk or compromised), and any other information that the Contractor/subcontractor considers relevant.

(4) With respect to unsecured PHI, the Business Associate is deemed to have discovered a security incident as defined above when the Business Associate either knew, or by exercising reasonable diligence should have been known to an employee of the Business Associate. Upon discovery, the Business Associate must notify VHA of the security incident immediately within one hour of discovery or suspicion as agreed to in the BAA.

(5) In instances of theft or break-in or other criminal activity, the Contractor/subcontractor must concurrently report the incident to the appropriate law enforcement entity (or entities) of jurisdiction, including the VA OIG and the VA Office of Security and Law Enforcement. The Contractor, its employees, and its subcontractors and their employees shall cooperate with VA and any law enforcement authority responsible for the investigation and prosecution of any possible criminal law violation(s) associated with any incident. The Contractor/subcontractor shall cooperate with VA in any civil litigation to recover VA information, obtain monetary or other compensation from a third party for damages arising from any incident, or obtain injunctive relief against any third party arising from, or related to, the incident.

(i) *Data breach notification requirements.* (1) This contract may require access to sensitive personal information. If so, the Contractor is liable to VA for liquidated damages in the event of a data breach involving any VA sensitive personal information the Contractor/Subcontractor processes or maintains under the contract as set forth in clause [852.211-76](#), Liquidated Damages—Reimbursement for Data Breach Costs.

(2) The Contractor/subcontractor shall provide notice to VA of a privacy or security incident as set forth in the Security and Privacy Incident Investigation section of this clause. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or

printed form, that results in the potential compromise of the confidentiality or integrity of the data. The Contractor shall fully cooperate with VA or third-party entity performing an independent risk analysis on behalf of VA. Failure to cooperate may be deemed a material breach and grounds for contract termination.

(3) The Contractor/subcontractor shall fully cooperate with VA or any Government agency conducting an analysis regarding any notice of a data breach or potential data breach or security incident which may require the Contractor to provide information to the Government or third-party performing a risk analysis for VA, and shall address all relevant information concerning the data breach, including the following:

- (i) Nature of the event (loss, theft, unauthorized access).
- (ii) Description of the event, including—
 - (A) Date of occurrence;
 - (B) Date of incident detection;
 - (C) Data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code.
 - (D) Number of individuals affected or potentially affected.
 - (E) Names of individuals or groups affected or potentially affected.
 - (F) Ease of logical data access to the lost, stolen or improperly accessed data in light of the degree of protection for the data, e.g., unencrypted, plain text.
 - (G) Amount of time the data has been out of VA control.
 - (H) The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons).
 - (I) Known misuses of data containing sensitive personal information, if any.
 - (J) Assessment of the potential harm to the affected individuals.
 - (K) Data breach analysis as outlined in 6500.2 Handbook, Management of Breaches Involving Sensitive Personal Information, as appropriate.

(L) Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.

(M) Steps taken in response to mitigate or prevent a repetition of the incident.

(j) *Training.* (1) All Contractor employees and subcontractor employees requiring access to VA information or VA information systems shall complete the following before being granted access to VA information and its systems:

(i) On an annual basis, successfully complete the VA Privacy and Information Security Awareness and VA Information Security Rules of Behavior training.

(ii) On an annual basis, sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the VA Information Security Rules of Behavior for Organizational Users, relating to access to VA information and information systems.

(iii) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access.

(2) The Contractor shall provide to the Contracting Officer and/or the COR a copy of the training certificates and affirmation that VA Information Security Rules of Behavior for Organizational Users signed by each applicable employee have been completed and submitted within five (5) days of the initiation of the contract and annually thereafter, as required.

(3) Failure to complete the mandatory annual training and acknowledgement of the VA Information Security Rules of Behavior, within the timeframe required, is grounds for suspension or termination of all physical or electronic access privileges and removal from work on the contract until such time as the training and documents are complete.

(k) *Subcontract flow down.* The Contractor shall include the substance of this clause, including this paragraph (k), in subcontracts, third-party agreements, and BAAs, of any amount and in which subcontractor employees, third-party servicers/employees, and business associates will perform functions where they will have access to VA information (including VA sensitive information, *i.e.*, sensitive personal information and protected health information), information systems, information technology (IT) or providing and accessing information technology-related contract services, support services, and related resources (see VAAR [802.101](#) definition of information technology-related contracts).

(End of clause)

852.207-70 [Reserved]

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

852.208-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

As prescribed in [808.405-570](#), insert the following clause:

**SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS—ORDERS OR BPAs (JAN 2023)
(DEVIATION)**

(a) In an effort to increase contracting opportunities for Veterans, depending on the evaluation factors included in the solicitation, VA will evaluate responses received based on the schedule Contractor's certified service-disabled veteran-owned small business/veteran-owned small business (SDVOSB/VOSB) status; and/or their proposed use of certified SDVOSB/VOSB listed in the SBA certification database on the SBA Veteran Small Business Certification Program portal at <https://veterans.certify.sba.gov/> (see 13 CFR 128) as subcontractors or teaming partners.

(b) To receive credit under this clause a contractor or subcontractor must be listed, at time of submission of offer/quotes and at time of award, as a certified SDVOSB/VOSB in the SBA certification database on the SBA Veteran Small Business Certification Program portal at <https://veterans.certify.sba.gov/> (see 13 CFR 128) and be otherwise eligible in accordance with SBA size standards for the acquisition and limitations on subcontracting requirements set forth in SBA regulations (see 13 CFR 121, 125 and 128).

(c) A certified SDVOSB listed in the SBA certification database schedule holder will receive full credit, and a certified VOSB listed in the SBA certification database schedule holder will receive partial credit for the SDVOSB/VOSB status evaluation factor.

(d) Offerors other than SDVOSBs or VOSBs proposing to use certified

SDVOSBs/VOSBs listed in the SBA certification database as subcontractors/teaming partners, will receive some consideration under this evaluation factor. To receive consideration, offerors must provide in their proposals:

(1) The name(s) and contact information of the certified SDVOSB(s)/VOSB(s) listed in the SBA certification database with whom they intend to team or subcontract.

(2) A brief description of the proposed team or subcontractor(s) arrangement.

(3) The approximate dollar value of the proposed teaming arrangements or subcontract(s).

(4) Evidence of teaming partner/subcontractor listing in the SBA certification database.

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

852.208-71 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs.

As prescribed in [808.405-570](#), insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTOR COMMITMENTS—ORDERS AND BPAs (JAN 2023) (DEVIATION)

(a) The Contractor agrees, if selected on the basis of having certified service-disabled veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB) status (see 13 CFR 128), to comply with the eligibility requirements in subpart [819.70](#), including the limitation on subcontracting requirements at 13 CFR 125.6.

(b) The Contractor agrees, if selected for award on the basis of teaming/subcontracting in accordance with [852.208-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders and BPAs, to use the evaluated firm(s) as proposed or if approved by contracting officer to substitute one or more certified SDVOSB/VOSB listed in the SBA certification database for work of the same or similar value.

(c) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(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 (OCT 2020)

(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](#).

(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]

852.211-76 Liquidated Damages—Reimbursement for Data Breach Costs.

As prescribed in [811.503-70](#), insert the following clause:

**LIQUIDATED DAMAGES—REIMBURSEMENT FOR DATA BREACH COSTS
(FEB 2023)**

(a) *Definition.* As used in this clause, “contract” means any contract, agreement, order or other instrument and encompasses the definition set forth in FAR 2.101.

(b) *Non-disclosure requirements.* As a condition of performance under a contract, order, agreement, or other instrument that requires access to sensitive personal information as defined in VAAR [802.101](#), the following is expressly required—

(1) The Contractor, subcontractor, their employees or business associates shall not, directly or through an affiliate or employee of the Contractor, subcontractor, or business associate, disclose sensitive personal information to any other person unless the disclosure is lawful and is expressly permitted under the contract; and

(2) The Contractor, subcontractor, their employees or business associates shall immediately notify the Contracting Officer and the Contracting Officer’s Representative (COR) of any security incident that occurs involving sensitive personal information.

(c) *Liquidated damages.* If the Contractor or any of its agents fails to protect VA sensitive personal information or otherwise engages in conduct which results in

a data breach, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of _____ [*Contracting Officer insert amount*] per affected individual in order to cover costs related to the notification, data breach analysis and credit monitoring. In the event the Contractor provides payment of actual damages in an amount determined to be adequate by the Contracting Officer, the Contracting Officer may forgo collection of liquidated damages.

(d) *Purpose of liquidated damages.* Based on the results from VA's determination that there was a data breach caused by Contractor's or any of its agents' failure to protect or otherwise engaging in conduct to cause a data breach of VA sensitive personal information, and as directed by the Contracting Officer, the Contractor shall be responsible for paying to the VA liquidated damages in the amount of _____ [*Contracting Officer insert amount*] per affected individual to cover the cost of the following:

- (1) Notification related costs.
- (2) Credit monitoring reports.
- (3) Data breach analysis and impact.
- (4) Fraud alerts.
- (5) Identity theft insurance.

(e) *Relationship to termination clause, if applicable.* If the Government terminates this contract, purchase order, or agreement, in whole or in part under clause [52.249-8](#), Default—Fixed-Price Supply and Service, or any other related FAR or VAAR clause included in the contract, in addition to the required liquidated damages for data breach-related expenses specified in paragraph (c) above, the Contractor is liable for excess costs for those supplies and services for repurchase as may be required under the Termination clause.

(End of clause)

Alternate 1 (FEB 2023). In commercial products or commercial services acquisitions awarded under the procedures of FAR part [8](#) or [12](#), substitute this paragraph (e) in lieu of paragraph (e) in the basic clause:

(e) *Relationship to termination clause, if applicable.* If the Government terminates this contract in whole or in part under the Termination for cause paragraph, FAR [52.212-4\(m\)](#), Contract Terms and Conditions—Commercial Products and Commercial Services, the Contractor is liable for damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These damages are in addition to costs of repurchase as may be required under the Termination clause.

Alternate II (FEB 2023). In simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial products or commercial services awarded under the procedures of FAR part [13](#) (see FAR [13.302-5\(d\)\(1\)](#)) and the clause at FAR [52.213-4](#), substitute this paragraph (e) in lieu of paragraph (e) in the basic clause:

(e) *Relationship to termination clause, if applicable.* If the Government terminates this contract in whole or in part under the Termination for cause paragraph, FAR [52.213-4\(g\)](#), Terms and Conditions – Simplified Acquisitions (Other Than Commercial Products and Commercial Services), or any other applicable FAR or VAAR clause, the Contractor is liable for damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These damages are in addition to costs of repurchase as may be required under the Termination clause.

852.212-70 [RESERVED]

852.212-71 Gray Market and Counterfeit Items.

As prescribed in [812.301\(f\)](#), insert the following clause:

GRAY MARKET AND COUNTERFEIT ITEMS (FEB 2023)

(a) No used, refurbished, or remanufactured supplies or equipment/parts shall be provided. This procurement is for new Original Equipment Manufacturer (OEM) items only. No gray market items shall be provided. Gray market items are OEM goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

(b) No counterfeit supplies or equipment/parts shall be provided. Counterfeit items include unlawful or unauthorized reproductions, substitutions, or alterations that have been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitutions include used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(c) Vendor shall be an OEM, authorized dealer, authorized distributor, or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

852.212-72 Gray Market and Counterfeit Items—Information Technology Maintenance Allowing Other-Than-New Parts.

As prescribed in [812.301\(f\)](#), insert the following clause:

GRAY MARKET AND COUNTERFEIT ITEMS—INFORMATION TECHNOLOGY MAINTENANCE ALLOWING OTHER-THAN-NEW PARTS (FEB 2023)

(a) Used, refurbished, or remanufactured parts may be provided. No gray market supplies or equipment shall be provided. Gray market items are Original Equipment Manufacturer (OEM) goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

(b) No counterfeit supplies or equipment shall be provided. Counterfeit items include unlawful or unauthorized reproductions, substitutions, or alterations that have been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitutions include used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(c) Vendor shall be an OEM, authorized dealer, authorized distributor, or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

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](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification

requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

As prescribed in [815.304-71\(a\)](#), insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS-(JAN 2023) (DEVIATION)

(a) In an effort to achieve socioeconomic small business goals, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business certification status and their proposed use of eligible certified service-disabled veteran-owned small businesses (SDVOSBs) and certified veteran-owned small businesses (VOSBs) as subcontractors.

(b) Eligible and certified service-disabled veteran-owned small businesses offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the certified Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be listed at the time of submission of offers and at time of award, as a certified SDVOSB/VOSB in the SBA certification database on the SBA Veteran Small Business Certification Program portal at <https://veterans.certify.sba.gov/> (see 13 CFR 128) and be otherwise eligible in accordance with SBA size standards for the acquisition and limitations on subcontracting requirements set forth in SBA regulations (see 13 CFR 121, 125 and 128).

(c) Non-Veteran offerors proposing to use certified SDVOSBs or VOSBs as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the certified 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 listed at the time of submission of offers and at time of award, as a certified SDVOSB/VOSB in the SBA certification database.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB

status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

852.215-71 Evaluation Factor Commitments.

As prescribed in [815.304-71\(b\)](#), insert the following clause:

EVALUATION FACTOR COMMITMENTS (OCT 2019)

(a) The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses (SDVOSBs) or veteran-owned small businesses (VOSBs) 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 SDVOSBs or VOSBs for subcontract work of the same or similar value.

(b) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

852.215-72 Notice of Intent to Re-Solicit.

As prescribed at [815.370-5](#), use the following provision:

NOTICE OF INTENT TO RE-SOLICIT (OCT 2019)

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with [815.370-2](#).

(End of provision)

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 _____,¹ as contained in _____,² as published by _____.³ All adjustments authorized under this clause shall be made by using the Base Index and Adjusting Indexes, which are published _____.⁴

(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.

(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: _____.⁵ The prices

Notes:

¹ 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.

² 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>".

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

⁴ 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.

⁵ 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.

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 _____⁶ 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 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.

⁶ 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 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 within the time period specified.

(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 _____⁷ 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)

Notes:

⁷ 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 _____⁸ as contained in _____⁹ as published by _____¹⁰. All adjustments authorized under this clause shall be made by _____¹¹ 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)

Notes:

⁸ 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).

⁹ 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](#)).

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

¹¹ 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 (%)¹² of the price of _____¹³ represents the Base Cost of _____¹⁴ 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: _____.¹⁵ 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 _____¹⁶ and the starting dates of each option year, if not already included in these dates. The Contracting

Notes:

¹² 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.

¹³ 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.

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

¹⁵ 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.

¹⁶ Establish time periods for when the Contracting Officer will process adjustments. This could be "the

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

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

Divide increase (or decrease) to the
Base Index by the Base Index \$0.570 + \$1.559 = .3656*
(36.56% increase)

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	$(\$0.11) + \$1.559 = (.0706)$ (7.06% decrease)
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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 _____¹⁷ 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)

Notes:

¹⁷ 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 (NOV 2021)

(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, starting first Monday of July.
Fuel Price \$3.05 Calculation:	
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)

852.216-76 Requirements—Supplement for Mortuary Services.

As prescribed in [816.506-70](#), use the following clause:

REQUIREMENTS—SUPPLEMENT FOR MORTUARY SERVICES (OCT 2019)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

- (2) The quantities to be furnished;
- (3) Delivery or performance dates;
- (4) Place of delivery or performance;
- (5) Packing and shipping instructions;
- (6) The address to send invoices; and
- (7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this 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)

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

852.219-70 VA Small Business Subcontracting Plan Minimum Requirements.

As prescribed in [819.708](#), insert the following clause:

VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (JAN 2023) (DEVIATION)

(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 certified service-disabled veteran-owned small business and certified veteran-owned small business SDVOSB/VOSB shall be at least commensurate with the Department's annual SDVOSB/VOSB subcontracting goals.

(c) For a commercial plan, the minimum goals for award of subcontracts to SDVOSB/VOSB shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business subcontracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, SDVOSB/VOSBs must be certified and listed in the SBA certification database at <https://veterans.certify.sba.gov/> (see 13 CFR 128) and be otherwise eligible in accordance with SBA size standards for the acquisition and limitations on subcontracting requirements set forth in SBA regulations (see 13 CFR 121, 125 and 128). A contractor may reasonably rely on a subcontractor's status as shown in the SBA certification database] as of the date of subcontract award, provided the contractor retains records of the results of the SBA certification database query.

(e) The Contractor shall annually submit a listing of SDVOSB/VOSB (for which credit toward goal achievement is to be applied) for review by personnel in the Office of Small and Disadvantaged Business Utilization. Use VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business.

(f) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

852.219-71 Notification of Competition Limited to Eligible 8(a) Participants.

As prescribed in [819.811-370](#), when [FAR 52.219-18](#), Notification of Competition Limited to Eligible 8(a) Participants, is utilized, use this clause in conjunction with the FAR clause.

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) PARTICIPANTS (NOV 2022)

Substitute paragraph (c) in [FAR Clause 52.219-18](#) as follows:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the Prime Contractor. Contractor shall comply with the limitations on subcontracting as provided in 13 CFR 125.6 and other 8(a) program requirements, as set forth in 13 CFR part 124.

(End of clause)

852.219-72 Notification of Section 8(a) Direct Award.

As prescribed in [819.811-370](#), paragraph (a), insert the following clause:

NOTIFICATION OF SECTION 8(a) DIRECT AWARD (NOV 2022)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program. By submission of its offer, the Offeror represents that it is in good standing and that it meets all of the criteria for participation in the program in accordance with 13 CFR part 124.

(b) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the Prime Contractor.

(c) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Partnership Agreement (PA) between the Small Business Administration (SBA) and the Department of Veterans Affairs.

(d) SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) Contractor under the 8(a) program. The cognizant SBA district office is:

[To be completed by the Contracting Officer at the time of award]

(e) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall obtain SBA's approval prior to processing any novation agreement(s). The contracting activity may assign contract administration functions to a contract administration office.

(f) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern.

(2) Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(3) It will adhere to the requirements of [52.219-14](#), Limitations of Subcontracting and other requirements in 13 CFR part 124 and 13 CFR 125.6, as applicable.

(g) Any proposed joint venture involving an 8(a) Participant must be approved by SBA before contracts are awarded.

(End of clause)

852.219-73 VA Notice of Total Set-Aside for Certified Service-Disabled Veteran-Owned Small Businesses.

As prescribed in [819.7011](#), insert the following clause:

**VA NOTICE OF TOTAL SET-ASIDE FOR CERTIFIED SERVICE-DISABLED
VETERAN-OWNED SMALL BUSINESSES
(JAN 2023) (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 [802.101](#), 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 certified for ownership and control pursuant to 38 U.S.C. 8127, 13 CFR 128, and is listed as certified in the SBA certification database at <https://veterans.certify.sba.gov/>; and

(v) The business agrees to comply with VAAR subpart [819.70](#) and Small Business Administration (SBA) regulations regarding small business size, government contracting, and the Veteran Small Business Certification Program at 13 CFR parts 121, 125, and 128.

(2) The term “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).

(3) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term “small business concern owned and controlled by Veterans with service-connected disabilities” has the meaning given the term “*small business concern owned and controlled by service-disabled veterans*” under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)).

(5) The term “*SDVOSB participant*” or *certified SDVOSB* means a small business that has been certified in the SBA Veteran Small Business Certification Program and listed in the SBA certification database (see 13 CFR 128.102).

(b) *General.* In order for a concern to submit an offer and be eligible for the award of an SDVOSB set-aside or sole source contract, the concern must qualify as

a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be listed as an SDVOSB participant in the SBA certification database as set forth in 13 CFR 128.

(1) Offers received from entities that are not certified SDVOSBs and listed in the SBA certification database at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made to a certified SDVOSB listed in the SBA certification database who is eligible at the time of submission of offer(s) and at the time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only certified SDVOSBs listed in the SBA certification database are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible and certified SDVOSB as defined in this clause, 13 CFR 121, 125, and 128, and VAAR subpart [819.70](#).

(d) *Agreement/LOS certification.* When awarded a contract action, including orders under multiple-award contracts, 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 part 125, including the non-manufacturer rule and limitations on subcontracting (LOS) requirements in 13 CFR 121.406(b) and 13 CFR 125.6. For the purpose of limitations on subcontracting, only certified SDVOSBs listed in the SBA certification database (including independent contractors) 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 otherwise eligible firm further agrees to comply with the required LOS certification requirements in this solicitation (see [852.219-75](#) or [852.219-76](#) as applicable). These requirements are summarized as follows:

(1) *Services.* In the case of a contract for services (except construction), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not certified SDVOSBs listed in the SBA certification database (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products.* (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the SDVOSB prime

contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not certified SDVOSBs listed in the SBA certification database. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the SDVOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

(3) *General construction.* In the case of a contract for general construction, the SDVOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not certified SDVOSBs listed in the SBA certification database.

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not certified SDVOSBs listed in the SBA certification database.

(5) *Subcontracting.* An SDVOSB subcontractor must meet the NAICS size standard assigned by the prime contractor and be certified and listed in the SBA certification database to count as similarly situated. Any work that a first tier SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* An SDVOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

_____ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

_____ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as an SDVOSB

if the joint venture complies with the requirements in 13 CFR 128.402 and the managing joint venture partner makes the representations under paragraph (c) of this clause. 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.

(g) *Precedence*. The VA Veterans First Contracting Program, as defined in VAAR [802.101](#), subpart [819.70](#), and this clause, takes precedence over any inconsistencies between the requirements of the SBA Veteran Small Business Certification Program and the VA Veterans First Contracting Program.

(h) *Misrepresentation*. Pursuant to 38 USC 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR [809.406-2](#) Causes for Debarment).

(End of clause)

852.219-74 VA Notice of Total Set-Aside for Certified Veteran-Owned Small Businesses.

As prescribed in [819.7011](#), insert the following clause:

VA NOTICE OF TOTAL SET-ASIDE FOR CERTIFIED VETERAN-OWNED SMALL BUSINESSES (JAN 2023) (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 Veteran(s);

(ii) The management and daily business operations of which are controlled by one or more Veteran(s);

(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 U.S.C. 8127 and 13 CFR 128, and is certified and listed in the SBA certification database at <https://veterans.certify.sba.gov/>; and

(v) The business agrees to comply with VAAR subpart [819.70](#) and Small Business Administration (SBA) regulations regarding small business size and government contracting, and the Veterans Small Business Certification Program at 13 CFR parts 121, 125, and 128.

(vi) The term VOSB includes VIP-listed service-disabled veteran-owned small businesses (SDVOSB).

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

(3) The term “*small business concern*” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term “*small business concern owned and controlled by Veterans*” has the meaning given that term under section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)), except that for a VA contract the firm must be certified and listed in the SBA certification database.

(5) The term “*VOSB participant*” or *certified VOSB* means a small business that has been certified as eligible to participate in the Veteran Small Business Certification Program and listed in the SBA certification database (see 13 CFR 128.102). It includes certified service-disabled veteran-owned small businesses (SDVOSBs).

(b) *General*. In order for a concern to submit an offer and be eligible for the award of a VOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be certified and listed as a VOSB or SDVOSB participant in the certification database as set forth in 13 CFR 128.

(1) Offers received from entities that are not certified VOSBs or SDVOSBs and listed in the SBA certification database at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made only to a certified VOSB who is eligible at the time of submission of offer(s) and at time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as a VOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation*. Pursuant to 38 U.S.C. 8127(e), only certified VOSBs listed in the SBA certification database are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible and certified VOSB as defined in this clause, 13 CFR 121, 125, and 128, and VAAR subpart [819.70](#).

(d) *Agreement/LOS certification.* When awarded a contract action, including orders under multiple-award contracts, 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 parts 121 and 125, including the non-manufacturer rule and limitations on subcontracting (LOS) requirements in 13 CFR 121.406(b) and 125.6. For the purpose of the limitations on subcontracting, only certified VOSBs listed in the SBA certification database, (including independent contractors) 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 otherwise eligible firm further agrees to comply with the required LOS certification requirements in this solicitation (see [852.219-75](#) or [852.219-76](#) as applicable). These requirements are summarized as follows:

(1) *Services.* In the case of a contract for services (except construction), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not certified VOSBs listed in the SBA certification database] (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products.* (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not certified VOSBs listed in the SBA certification database. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the VOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

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

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not VIP-listed VOSBs.

(5) *Subcontracting*. A VOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period*. A VOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

_____ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

_____ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures*. A joint venture may be considered eligible as a VOSB if the joint venture complies with the requirements in 13 CFR 128.402 and the managing joint venture partner makes the representations under paragraph (c) of this clause. 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.

(g) *Precedence*. The VA Veterans First Contracting Program, as defined in VAAR [802.101](#), subpart [819.70](#), and this clause, takes precedence over any inconsistencies between the requirements of the SBA Veteran Small Business Certification Program and the VA Veterans First Contracting Program.

(h) *Misrepresentation*. Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's VOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR [809.406-2](#), Causes for Debarment).

(End of clause)

852.219-75 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.

As prescribed in [819.7011\(b\)](#), insert the following clause:

**VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF
COMPLIANCE FOR SERVICES AND CONSTRUCTION
(JAN 2023) (DEVIATION)**

(a) Pursuant to 38 U.S.C. 8127(l)(2), the offeror certifies that—

(1) If awarded a contract (see [FAR 2.101](#) definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Contracting Officer check the appropriate box below based on the predominant NAICS code assigned to the instant acquisition as set forth in [FAR 19.102](#).*]

(i) *Services*. In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the SBA certification database as set forth in [852.219-73](#) or certified VOSBs listed in the SBA certification database as set forth in [852.219-74](#). Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii) *General construction*. In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the SBA certification database as set forth in [852.219-73](#) or certified VOSBs listed in the SBA certification database as set forth in [852.219-74](#). Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii) *Special trade construction contractors*. In the case of a contract for special trade contractors, the contractor will not pay more than 75% of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the SBA certification database as set forth in [852.219-73](#) or certified VOSBs listed in the SBA certification database as set forth in [852.219-74](#). Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render

the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

- (i) Referral to the VA Suspension and Debarment Committee;
- (ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and
- (iii) Prosecution for violating 18 U.S.C. 1001.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/insert required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification:

I hereby certify that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of *[insert name of offeror]*.

Printed Name of Signee:

Printed Title of Signee:

Signature: _____

Date: _____

Company Name and Address:

(End of clause)

852.219-76 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.

As prescribed in [819.7011\(c\)](#), insert the following clause. The contracting officer shall tailor the clause in paragraph (a)(2)(iii) as appropriate:

VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (JAN 2023) (DEVIATION)

(a) Pursuant to 38 U.S.C. 8127(l)(2), the offeror certifies that—

(1) If awarded a contract (see [FAR 2.101](#) definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Offeror check the appropriate box*]

(i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the SBA certification database as set forth in [852.219-73](#) or certified VOSBs listed in the SBA certification database as set forth in [852.219-74](#). Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(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. The offeror

understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification.
[Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying itself as either a manufacturer or nonmanufacturer]:

(i) *Manufacturer or producer.* The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii) *Nonmanufacturer.* The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required in order to qualify as a nonmanufacturer. [Offeror fill-in—check each box below.]

The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii) The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. [Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.]

or [Contracting officer tailor clause to remove one or other block under subparagraph (iii).]

If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns. [*Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.*]

(3) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(4) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

- (i) Referral to the VA Suspension and Debarment Committee;
- (ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and
- (iii) Prosecution for violating 18 U.S.C. 1001.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/ fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do

not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification:

I hereby certify that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of *[insert name of offeror]*.

Printed Name of Signee:

Printed Title of Signee:

Signature: _____

Date: _____

Company Name and Address:

(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 [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.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

<u>System</u>	<u>Percent</u>
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5

Part 852—Solicitation Provisions and Contract Clauses

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

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the Contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the Contractor in preparing 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.

(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)

852.235-70 Research Misconduct.

As prescribed at [835.003-71](#), insert the following clause:

RESEARCH MISCONDUCT (DEC 2022)

(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection and remediation of research misconduct as defined in [835.001-70](#).

(b) The Contractor shall notify the Contracting Officer within 7 business days of any research misconduct allegations received by the facility concerning this contract award.

(c) The Contractor shall conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, the Contractor shall notify the Contracting Officer and, unless otherwise instructed shall—

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies, or a recommendation that no further action is warranted;

(2) When the investigation results in a research misconduct finding, ensure the matter is adjudicated by a responsible official who was not involved in the inquiry or investigation and is organizationally separated from the element which conducted the investigation. The adjudication shall include a review of the investigation record and a recommendation of appropriate corrective actions and sanctions; and

(3) When an investigation is complete, the Contractor shall forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's recommendation and notification of any proposed corrective action, and the subject's written response, if any. The Contracting Officer will review the documentation to determine whether the proposed corrective action can proceed.

(d) The VA may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that—

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause and it is believed it cannot reasonably conduct the inquiry;

(2) VA involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(3) The allegation involves possible criminal misconduct.

(e) The Contractor shall provide safeguards for information received and protect informants, witnesses and respondents of allegations as follows:

(1) The Contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations.

(2) The Contractor shall also assure the respondent that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegations and reasonable access to any evidence submitted to support each allegation. Respondents must be given the opportunity to prepare a response to an allegation and notice of any findings of research misconduct.

(f) *Objectivity and expertise.* The Contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts the adjudication must not be the same individual(s) who conducted the inquiry or investigation and must be separate organizationally from the element that conducted the inquiry or investigation.

(End of clause)

852.235-71 Protection of Human Subjects.

As prescribed at [835.003-72](#), insert the following clause:

PROTECTION OF HUMAN SUBJECTS (DEC 2022)

(a) Research involving human subjects is not permitted under this award unless expressly authorized in writing by the Contracting Officer. Such authorization will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(b) The Federal Policy for the Protection of Human Subjects (the “Common Rule”), adopted by VA (see 38 CFR Part 16), requires Contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a “human subject” as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term “research” means a systematic investigation, including research development and/or testing and evaluation, designed to develop or contribute to generalized knowledge. The Common Rule also sets forth categories of research that may be considered exempt from 15 CFR Part 27. These categories may be found at 15 CFR 27.101.

(c) Should research involving human subjects be included in the proposal, prior to issuance of an award, the Contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that the Contractor has established a relationship with an appropriate Institutional Review Board (“cognizant IRB”). An

appropriate IRB is one that is located within the United States and within the community in which the research will be conducted;

(2) Documentation to verify that the cognizant IRB possesses a valid registration with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP");

(3) Documentation to verify that the Contractor has a valid Federal-wide Assurance (FWA) issued by OHRP.

(d) Prior to starting any research involving human subjects, the Contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval. This documentation may include:

(1) Copies of the research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule (Note: this option is not available for activities that fall under 45 CFR part 46 subpart C).

(e) Additionally, if the Contractor modifies a research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the Contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The Contractor shall not implement any IRB approved modification without written approval by the Contracting Officer.

(f) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(g) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agency or employee of the Government. The Contractor agrees that it has entered into this

contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgement or otherwise, as an independent Contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(h) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements, the Contracting Officer may immediately suspend the research and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete the corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract and the Contractor's name may be removed from the list of those Contractors with approved Department of Health and Human Services Human Subject Assurances.

(End of clause)

852.235-72 Animal Welfare.

As prescribed in [835.003-73](#), insert the following clause:

ANIMAL WELFARE (DEC 2022)

(a) The Contractor shall—

(1) Use the Veterans Affairs (VA), Office of Research Oversight (ORO) Laboratory Animal Welfare Checklist;

(2) Comply with the United States Department of Agriculture (USDA) Animal Welfare Act and Animal Welfare Regulations at https://www.aphis.usda.gov/animal_welfare, and the Animal Welfare Information Center's (AWIC) information for improved animal care and use in research, testing, and teaching provided at <https://www.nal.usda.gov/awic>;

(3) Develop and provide to the Contracting Officer a written plan of providing adequate veterinary care to laboratory animals, including—

(i) The frequency of visits; and

(ii) Provisions for after-hours, weekend and holiday veterinary coverage.

(b) The Contracting Officer may immediately suspend the work by issuance

of a stop work order and suspend further payments under this contract for failure to comply with the requirements of this clause.

(c) The suspension will stay in effect until the Contractor complies with the requirements. Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract.

(d) The Contractor shall include the substance of this clause, in all subcontracts involving research and development, testing, evaluation or training that use live vertebrate animals.

(End of clause)

852.235-73 Facilities.

As prescribed at [835.003-74](#), insert the following clause:

FACILITIES (DEC 2022)

(a) The facilities specified in the contract are considered essential to the work being performed under this contract. Therefore, prior to removing, replacing, or diverting any of the listed or specified facilities, the Contractor shall—

(1) Notify the Contracting Officer in writing; and

(2) Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the potential impact on this contract.

(b) The Contractor shall make no removal, replacement or diversion of facilities without the Contracting Officer's written consent.

(End of clause)

852.235-74 Acknowledgement of Support and Disclaimer.

As prescribed at [835.003-75](#), insert the following clause:

ACKNOWLEDGEMENT OF SUPPORT AND DISCLAIMER (DEC 2022)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency) under this VA contract.

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also

contain the following disclaimer:

Any opinions, findings, conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the VA.

(End of clause)

852.235-75 Scientific and Technical Reports.

As prescribed at [835.010](#), insert the following clause:

SCIENTIFIC AND TECHNICAL REPORTS (DEC 2022)

The Contractor shall submit an electronic copy of the approved scientific technical reports, not a summary, delivered under this contract to the National Technical Information Service (NTIS) as delineated at FAR [35.010](#).

(End of clause)

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 1 (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*)

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)

852.237-70 Indemnification and Medical Liability Insurance.

As prescribed in [837.403-70\(a\)](#), insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (OCT 2019)

(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 within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under 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. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

852.237–71 Nonsmoking Policy for Children’s Services.

As prescribed in [837.403-70\(b\)](#), insert the following clause:

NONSMOKING POLICY FOR CHILDREN’S SERVICES (OCT 2019)

(a) Smoking in facilities where certain federally funded children’s services are provided shall be prohibited. The Pro-children Act of 2001 (20 USC 7181-7183) prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children’s services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

852.237–72 Crime Control Act—Reporting of Child Abuse.

As prescribed in [837.403-70\(c\)](#), insert the following clause:

CRIME CONTROL ACT OF 1990—REPORTING OF CHILD ABUSE (OCT 2019)

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

852.237–73 Crime Control Act—Requirement for Background Checks.

As prescribed in [837.403-70\(d\)](#), insert the following clause:

CRIME CONTROL ACT OF 1990—REQUIREMENT FOR BACKGROUND CHECKS (OCT 2019)

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services, as defined in the act, to children under the age of 18 undergo a criminal background check.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under the contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

852.237–74 Non-Discrimination in Service Delivery.

As prescribed in [837.110-70\(a\)](#), the Contracting Officer shall insert the following clause in solicitations and contracts:

852.237–74 Non-Discrimination in Service Delivery (OCT 2019)

It is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

852.237-75 Key Personnel.

As prescribed in [837.110-70\(b\)](#), insert the following clause:

KEY PERSONNEL (OCT 2019)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract. If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

(End of clause)]

852.237-76 Award to Single Offeror.

As prescribed in [837.7001\(a\)\(1\)](#), insert the following provision:

AWARD TO SINGLE OFFEROR (OCT 2019)

- (a) Award shall be made to a single offeror.
- (b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.
- (c) The Government will evaluate offers on the basis of the estimated quantities shown.
- (d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate 1 (OCT 2019). As prescribed in [837.7001\(a\)\(2\)](#), insert the following paragraph (d) in lieu of paragraph (d) of the basic provision:

- (d) Award will be made to that responsive, responsible offeror whose total

aggregate offer is in the best interest of the Government.

852.237-77 Area of Performance.

As prescribed in [837.7001\(b\)\(1\)](#), insert the following clause:

AREA OF PERFORMANCE (OCT 2019)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

852.237-78 Performance and Delivery.

As prescribed in [837.7001\(b\)\(2\)](#), insert the following clause:

PERFORMANCE AND DELIVERY (OCT 2019)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold

the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection is completed.

(End of clause)

852.237-79 Subcontracting.

As prescribed in [837.7001\(b\)\(3\)](#), insert the following clause:

SUBCONTRACTING (OCT 2019)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

852.237-80 Health Department and Transport Permits.

As prescribed in [837.7001\(b\)\(4\)](#), insert the following clause:

HEALTH DEPARTMENT AND TRANSPORT PERMITS (OCT 2019)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

852.239-70 Security Requirements for Information Technology Resources.

As prescribed in [839.106-70\(a\)](#), insert the following clause:

**SECURITY REQUIREMENTS FOR INFORMATION TECHNOLOGY RESOURCES
(FEB 2023)**

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

Information technology has the same meaning in FAR [2.101](#) and also means Information and Communication Technology (ICT).

Information system security plan means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.

(b) *Responsibilities.* The Contractor shall be responsible for information system security for all systems connected to a Department of Veterans Affairs (VA) network or operated by the Contractor for VA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or other system access to VA information that directly supports the mission of VA. Examples of tasks that require security provisions include—

(1) Hosting of VA e-Government sites or other information technology operations;

(2) Acquisition, transmission, or analysis of data owned by VA with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to VA general support systems/major applications at a level beyond that granted the general public, e.g., bypassing a firewall.

(c) *Information system security plan.* The Contractor shall develop, provide, implement, and maintain an Information System Security Plan. VA information systems must have an information system security plan that provides an overview of the security requirements for the system and describes the security controls in place or the plan for meeting those requirements. This plan shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of information system resources developed, processed, or used under this contract. The information system security plan should include implementation status, responsible entities, resources, and estimated completion dates. Information system security plans may also include, but are not limited to, a compiled list of system characteristics, and key security-related documents such as a risk assessment, PIA, system interconnection agreements, contingency plan, security configurations, configuration management plan, and incident response plan. The plan shall address the specific contract requirements regarding information systems related support or services included in the contract, to include the performance work statement (PWS) or statement of work (SOW). The Contractor's Information System Security Plan shall comply with applicable Federal Laws that include, but are not limited to, [40 U.S.C. 11331](#), the Federal Information Security Modernization Act (FISMA) of 2014 and the E-Government Act of 2002. The plan shall meet information system security requirements in accordance with Federal and VA policies and procedures, and as amended during the term of this contract, and include, but are not limited to the following.

(1) OMB Circular A-130, Managing Information as a Strategic Resource;

(2) National Institute of Standards and Technology (NIST) Guidelines;

and

(3) [VA Directive 6500](#), VA Cybersecurity Program, and the directives and

handbooks in the VA 6500 series related to VA information (including VA sensitive information and sensitive personal information and information systems security and privacy), as well as those set forth in the contract specifications, statement of work, or performance work statement. These include, but are not limited to, [VA Handbook 6500.6](#), Contract Security; and VA [Directive](#) and [Handbook](#) 0710, Personnel Security and Suitability Program, which establishes VA's procedures, responsibilities, and processes for complying with current Federal law, Executive Orders, policies, regulations, standards and guidance for protecting VA information, information systems (see [802.101](#), Definitions) security and privacy, and adhering to personnel security requirements when accessing VA information or information systems.

(d) *Submittal of plan.* Within 90 days after contract award, the Contractor shall submit the Information System Security Plan to the Contracting Officer for review and approval.

(e) *Security accreditation.* As required by current VA policy, the Contractor shall submit written proof of information system security accreditation to the Contracting Officer for non-VA owned systems. Such written proof may be furnished either by the Contractor or by a third party. Accreditation shall be in accordance with VA policy available from the Contracting Officer upon request. The Contractor shall submit for acceptance by the Contracting Officer along with this accreditation a final information system security plan, such as a risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. The accreditation and the final information system security plan and the accompanying documents, such as a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan.

(f) *Annual validation.* On an annual basis, the Contractor shall verify in writing to the Contracting Officer that the Information System Security Plan remains valid.

(g) *Banners.* The Contractor shall ensure that the official VA banners are displayed on all VA systems (both public and private) operated by the Contractor that contain Privacy Act information before allowing anyone access to the system. The Office of Information Technology will make official VA banners available to the Contractor.

(h) *Screening and access.* The Contractor shall screen all personnel requiring privileged access or limited privileged access to systems operated by the Contractor for VA or interconnected to a VA network in accordance with VA Directives and Handbooks referenced in paragraph (c) of this clause.

(i) *Training.* The Contractor shall ensure that its employees performing services under this contract complete VA security awareness training on an annual basis. This includes signing an acknowledgment that they have read, understand, and agree to abide by the VA Information Security Rules of Behavior (VA National

Rules of Behavior) as required by [38 U.S.C. 5723](#); FAR [39.105](#), Privacy; clause [852.204-71](#), Information and Information Systems Security, and this clause on an annual basis.

(j) *Government access.* The Contractor shall provide the Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. The Contractor shall provide access to enable a program of information system inspection (to include vulnerability testing), investigation and audit (to safeguard against threats and hazards to the integrity, availability and confidentiality of VA data or to the function of information systems operated on behalf of VA), and to preserve evidence of computer crime.

(k) *Notification of termination of employees.* The Contractor shall immediately notify the Contracting Officer when an employee who has access to VA information systems or data terminates employment.

(l) *Subcontractor flow down requirement.* The Contractor shall incorporate and flow down the substance of this clause to all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

852.239-71 Information System Security Plan and Accreditation.

As prescribed in [839.106-70\(a\)](#), insert the following provision:

INFORMATION SYSTEM SECURITY PLAN AND ACCREDITATION (FEB 2023)

All offers submitted in response to this solicitation or request for quotation shall address the approach for completing the security plan and accreditation requirements in clause [852.239-70](#), Security Requirements for Information Technology Resources.

(End of provision)

852.239-72 Information System Design and Development.

As prescribed in [839.106-70\(b\)](#), insert the following clause:

INFORMATION SYSTEM DESIGN AND DEVELOPMENT (FEB 2023)

(a) *Design or development at non-VA facilities.* Information systems that are designed or developed for or on behalf of VA at non-VA facilities shall comply with all VA directives developed in accordance with the Federal Information Security

Modernization Act (FISMA), Health Insurance Portability and Accountability Act (HIPAA) regulations, NIST, and related VA security and privacy control requirements for Federal information systems. This includes standards for the protection of electronic protected health information (PHI), outlined in [45 CFR part 164, subpart C](#), information and system security categorization level designations in accordance with FIPS 199 and FIPS 200 with implementation of all baseline security controls commensurate with the FIPS 199 system security categorization and the Trusted Internet Connections (TIC) Reference Architecture).

(b) *Privacy Impact Assessment.* During the development cycle a Privacy Impact Assessment (PIA) must be completed, provided to the COR, and approved by the VA Privacy Service in accordance with [VA Directive 6508](#), Implementation of Privacy Threshold Analysis and Privacy Impact Assessment.

(c) *Security of procured or developed systems and technologies.* The Contractor shall ensure the security of all procured or developed systems and technologies, including their subcomponents (hereinafter referred to as "Systems"), throughout the life of the contract and any extension, warranty, or maintenance periods. This includes, but is not limited to, workarounds, patches, hotfixes, upgrades, and any physical components (hereafter referred to as Security Fixes) which may be necessary to fix all security vulnerabilities published or known to the Contractor anywhere in the Systems, including Operating Systems and firmware. The Contractor shall ensure that Security Fixes shall not negatively impact the Systems.

(d) *Subcontract flow down requirements.* The Contractor shall include the clause at [52.224-1](#), Privacy Act Notification, in every solicitation and/or subcontract awarded by the Contractor when the clause FAR [52.224-1](#) is included in its contract.

(End of clause)

852.239-73 Information System Hosting, Operation, Maintenance, or Use.

As prescribed in [839.106-70\(c\)](#), insert the following clause:

INFORMATION SYSTEM HOSTING, OPERATION, MAINTENANCE, OR USE (FEB 2023)

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

Assessment and Authorization (A&A) means the process used to ensure information systems including Major Applications and General Support Systems have effective security safeguards which have been implemented, planned for, and documented in an Information Technology Security Plan. The A&A process per

applicable VA policies and procedures is the mechanism by which VA provides an Authorization to Operate (ATO), the official management decision given by the VA to authorize operation of an information system (see [VA Handbook 6500](#) for additional details).

Information system security plan means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.

(b) *Hosting, operation, maintenance, or use at non-VA facilities.* For information systems that are hosted, operated, maintained, or used on behalf of VA at non-VA facilities, Contractors/subcontractors are fully responsible and accountable for ensuring compliance with the applicable Health Insurance Portability and Accountability (HIPAA) Act of 1996 (HIPAA) Privacy and Security Rules, the Privacy Act and other required VA confidentiality statutes included in VA's mandatory yearly training and privacy handbooks, Federal Information Security Modernization Act (FISMA), National Institute of Standards and Technology (NIST), Federal Information Processing Standards (FIPS), and VA security and privacy directives and handbooks. This includes conducting compliant risk assessments, routine vulnerability scanning, system patching and change management procedures, and the completion of an acceptable contingency plan for each system. The Contractor's security control procedures must be equivalent to or exceed, those procedures used to secure VA systems. A Privacy Impact Assessment (PIA) must also be provided to the COR and approved by VA Privacy Service prior to approval to operate. All external Internet connections to VA's network involving VA information must be in accordance with the Trusted Internet Connections (TIC) Reference Architecture and reviewed and approved by VA prior to implementation. For Cloud Services hosting, the Contractor shall also ensure compliance with the Federal Risk and Authorization Management Program (FedRAMP).

(c) *Collecting, processing, transmitting, and storing of VA sensitive information.* Adequate security controls for collecting, processing, transmitting, and storing of VA sensitive information, must be in place, tested, and approved by VA prior to hosting, operation, maintenance, or use of the information system, or systems by or on behalf of VA. These security controls are to be assessed and stated within the Information System Security Plan and if these controls are determined not to be in place, or inadequate, a Plan of Action and Milestones (POA&M) must be submitted and approved prior to the collection, processing, transmitting, and storing of VA sensitive information.

(d) *Annual FISMA security controls assessment.* The Contractor/subcontractor's system must adhere to all FISMA, FIPS, and NIST standards related to the annual FISMA security controls assessment and review and update the Privacy Impact Assessment. Any deficiencies noted during this assessment must be provided to the Contracting Officer for entry into VA's POA&M

management process. The Contractor/subcontractor must use VA's POA&M process to document planned remedial actions to address any deficiencies in information security policies, procedures, and practices, and the completion of those activities. Security deficiencies must be corrected within the timeframes specified by the VA in the performance work statement (PWS) or statement of work (SOW), or in the approved remediation plan through the VA POA&M process. Contractor/subcontractor procedures are subject to periodic, unannounced assessments by VA officials, including the VA Office of Inspector General. The physical security aspects associated with Contractor/subcontractor activities must also be subject to such assessments. The results of an annual review or a major change in the cybersecurity posture at any time may indicate the need for reassessment and reauthorization of the system. If major changes to the system occur that may affect the privacy or security of the data or the system, the A&A of the system may need to be reviewed, retested and re-authorized per [VA Directive 6500](#). This may require reviewing and updating all of the documentation as described in [VA Handbook 6500.6](#) (e.g., System Security Plan, Contingency Plan). See [VA Handbook 6500.6](#) for a list of documentation. The VA Information System Risk Management (ISRM) office can provide guidance on whether a new A&A would be necessary.

(e) *Annual self-assessment.* The Contractor/subcontractor must conduct an annual self-assessment on all systems and outsourced services as required. Both hard copy and electronic copies of the assessment must be provided to the COR. VA reserves the right to conduct such an assessment using government personnel or another Contractor/subcontractor. The Contractor/subcontractor must take appropriate and timely action, as may be specifically addressed in the contract, to correct or mitigate any weaknesses discovered during such testing, at no additional cost to the Government to correct Contractor/subcontractor systems and outsourced services.

(f) *Prohibition of installation and use of personally-owned or Contractor-owned equipment or software on VA networks.* VA prohibits the installation and use of personally-owned or Contractor/subcontractor-owned equipment or software on VA networks. If non-VA owned equipment must be used to fulfill the requirements of a contract, it must be stated in the service agreement, PWS, SOW or contract. All of the security controls required for government furnished equipment (GFE) must also be utilized in approved other equipment (OE) at the Contractor's expense. All remote systems must be equipped with, and use, a VA-approved antivirus (AV) software and a personal (host-based or enclave based) firewall that is configured with a VA-approved configuration. Software must be kept current, including all critical updates and patches. Owners of approved OE are responsible for providing and maintaining the anti-viral software and the firewall on the non-VA owned OE.

(g) *Disposal or return of electronic storage media on non-VA leased or non-VA owned IT equipment.* All electronic storage media used on non-VA leased or non-VA owned IT equipment that is used to store, process, or access VA

information must be handled in adherence with NIST 800-88, Rev. 1, “Guidelines for Media Sanitization,” and [VA Directive 6500](#), VA Cybersecurity Program, paragraph 2(b)(5), Media Sanitization including upon—

(1) Completion or termination of the contract; or

(2) Disposal or return of the IT equipment by the Contractor/subcontractor or any person acting on behalf of the Contractor/subcontractor, whichever is earlier. Media (e.g., hard drives, optical disks, CDs, back-up tapes) used by the Contractors/ subcontractors that contain VA information must be returned to the VA for sanitization or destruction or the Contractor/subcontractor must self-certify that the media has been disposed of per [VA Handbook 6500.10](#) requirements. This must be completed within 30 days of termination of the contract.

(h) *Bio-Medical devices and other equipment or systems.* Bio-Medical devices and other equipment or systems containing media (e.g., hard drives, optical disks) with VA sensitive information will not be returned to the Contractor at the end of lease, for trade-in, or other purposes. For purposes of these devices and protection of VA sensitive information the devices may be provided back to the Contractor under one of three scenarios—

(1) The Contractor must accept the system without the drive;

(2) A spare drive must be installed in place of the original drive at time of turn-in if VA's initial medical device purchase included a spare drive; or

(3) The Contractor may request reimbursement for the drive at a reasonable open market replacement cost to be separately negotiated by the Contracting Officer and the Contractor at time of contract closeout.

(End of clause)

852.239-74 Security Controls Compliance Testing.

As prescribed in [839.106-70\(d\)](#), insert the following clause:

SECURITY CONTROLS COMPLIANCE TESTING (FEB 2023)

On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security and privacy controls implemented by the Contractor under the clauses contained within the contract. With 10 working-days' notice, at the request of the government, the Contractor must fully cooperate and assist in a government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The government may conduct a security control

assessment on shorter notice, to include unannounced assessments, as determined by VA in the event of a security incident or at any other time.

(End of clause)

852.239-75 Information and Communication Technology Accessibility Notice.

As prescribed in [839.203-70\(a\)](#), insert the following provision:

INFORMATION AND COMMUNICATION TECHNOLOGY ACCESSIBILITY NOTICE (FEB 2023)

(a) Any offeror responding to this solicitation must comply with established VA Information and Communication Technology (ICT) (formerly Electronic and Information (EIT)) accessibility standards. Information about Section 508 is available at <http://www.section508.va.gov/>.

(b) The Section 508 accessibility standards applicable to this solicitation are stated in the clause at [852.239-75](#), Information and Communication Technology Accessibility. In order to facilitate the Government's determination whether proposed ICT supplies meet applicable Section 508 accessibility standards, offerors must submit appropriate VA Section 508 Checklists, in accordance with the checklist completion instructions. The purpose of the checklists is to assist VA acquisition and program officials in determining whether proposed ICT supplies, or information, documentation and services conform to applicable Section 508 accessibility standards. The checklists allow offerors or developers to self-evaluate their supplies and document—in detail—whether they conform to a specific Section 508 accessibility standard, and any underway remediation efforts addressing conformance issues.

(c) Respondents to this solicitation must identify any exception to Section 508 requirements. If an offeror claims its supplies or services meet applicable Section 508 accessibility standards, and it is later determined by the Government, *i.e.*, after award of a contract or order, that supplies or services delivered do not conform to the described accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its expense.

(End of provision)

852.239-76 Information and Communication Technology Accessibility.

As prescribed in [839.203-70\(b\)](#), insert the following clause:

**INFORMATION AND COMMUNICATION TECHNOLOGY ACCESSIBILITY
(FEB 2023)**

(a) All information and communication technology (ICT) (formerly referred to as electronic and information technology (EIT)) supplies, information, documentation and services support developed, acquired, maintained or delivered under this contract or order must comply with the “Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards” (see 36 CFR part 1194). Information about Section 508 is available at <http://www.section508.va.gov/>.

(b) The Section 508 accessibility standards applicable to this contract or order are identified in the specification, statement of work, or performance work statement. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(c) The Section 508 accessibility standards applicable to this contract are: _____ [*Contracting Officer: insert the applicable Section 508 accessibility standards*].

(d) In the event of a modification(s) to this contract or order, which adds new EIT supplies or services or revises the type of, or specifications for, supplies or services, the Contracting Officer may require that the Contractor submit a completed VA Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(e) If this is an Indefinite-Delivery type contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include ICT supplies or services will define the specifications and accessibility standards for the order. In those cases, the Contractor may be required to provide a completed VA Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the provided documentation, remediation of the

supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(End of clause)

852.241-70 Disputes—Utility Contracts.

As prescribed in [841.501-70](#), insert the following clause:

DISPUTES—UTILITY CONTRACTS (SEP 2020)

(a) *Definition.* As used in this clause, *Independent regulatory body* means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

(b) *Independent Regulatory Body determinations.* The requirements of the Disputes clause at [FAR 52.233-1](#) are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to any determinations by the independent regulatory body having jurisdiction.

(End of clause)

852.242-70 Government Construction Contract Administration.

As prescribed in [842.272](#), insert the following clause. This is a fill-in clause.

GOVERNMENT CONSTRUCTION CONTRACT ADMINISTRATION (OCT 2020)

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

[Insert name and office address of Contracting Officer]

[*Note: If any of the functions set forth in [FAR 42.302](#) are to be retained by the Contracting Officer, identify those as well with the notation: "With the exception of the following contract administration functions: _____."*]

Delete this notation if not required.]

(b) The following functions will be retained by the Contracting Officer or Administrative Contracting Officer (ACO) and are not redelegable to Resident Engineers:

- (1) Award of contract modifications either through supplemental agreements or change orders that exceed the ACO's appointed warrant limitations.
- (2) Issuance of default letters.
- (3) Issuance of Cure or Show-Cause Notices.
- (4) Suspension of work letters and/or modifications.
- (5) Issuance of Contracting Officer final determination letters.
- (6) Issuance of termination notices.
- (7) Authorization of final payment.

(c) 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 who possesses limited warranted authority.

(d) 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.

(e) The Contracting Officer or an Administrative Contracting Officer identified in paragraph (a) may further delegate limited authority and specialized support services responsibilities below to the following warranted Resident Engineer personnel on site, not to exceed the dollar value and threshold of their warrant:

[Insert name and office address of Resident Engineer with limited authority]

- (1) Conduct post-award orientation conferences.
- (2) Issue administrative changes (see [FAR 43.101](#)) correcting errors or omissions, contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes.
- (3) For actions not to exceed \$ *[Insert dollar amount]* negotiate and execute supplemental agreements 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)

852.242-71 Administrative Contracting Officer.

As prescribed in [842.271](#), insert the following clause:

ADMINISTRATIVE CONTRACTING OFFICER (OCT 2020)

The Contracting Officer reserves the right to designate an Administrative Contracting Officer (ACO) for the purpose of performing certain tasks/duties in the administration of the contract. Such designation will be in writing through an ACO Letter of Delegation and will identify the responsibilities and limitations of the ACO. A copy of the ACO Letter of Delegation will be furnished to the Contractor.

(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 (a)(1) through (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.

Area destination	Anticipated demand	Factor
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)

852.249-70 Termination for Default—Supplement for Mortuary Services.

As prescribed in [849.504-70](#), insert the following clause:

**TERMINATION FOR DEFAULT—SUPPLEMENT FOR MORTUARY SERVICES
(MAY 2020)**

The FAR clause entitled “Default (Fixed-Price Supply and Service)” at [52.249-8](#), is supplemented as follows:

The Contracting Officer may terminate this contract for default by written notice without the ten-day notice required by paragraph (a)(2) of the Default clause if—

(a) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Veteran Affairs in fulfilling its responsibility for proper care of remains;

(b) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(c) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(d) The Contractor refuses to perform the services required for any particular remains; or

(e) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(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)

852.270-2 [RESERVED]

852.270-3 [RESERVED]

852.271-70 [RESERVED]

852.271-71 [RESERVED]

852.271-72 Time Spent by Counselee in Counseling Process.

As prescribed in [871.210](#), insert the following clause:

TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (NOV 2021)

The Contractor agrees that no counselee referred under the provisions of this agreement will be required to participate or engage in additional sessions or expend 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 [871.210](#), insert the following clause:

USE AND PUBLICATION OF COUNSELING RESULTS (NOV 2021)

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 of Instruction, Counseling or Testing Operations.

As prescribed in [871.210](#), insert the following clause:

INSPECTION OF INSTRUCTION, COUNSELING OR TESTING OPERATIONS (NOV 2021)

The Contractor shall 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 to examine the training facilities, the work of the Veterans in training under this contract, and the records of these operations, along with any other rights to examine records and conduct inspections in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.

(End of clause)

852.271-75 [Reserved]**852.273-70 Late Offers.**

As prescribed in [873.110\(a\)](#), insert the following provision:

LATE OFFERS (NOV 2021)

This provision replaces paragraph (f) of FAR provision [52.212-1](#), Instructions to Offerors—Commercial Items. 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 (NOV 2021)

The Contracting Officer may elect to use the alternative negotiation techniques described in [873.111\(d\)](#) 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 (NOV 2021)

(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 (NOV 2021)

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror whose proposal, 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). The Government may reject any or all proposals if such action is in the Government's interest. Additionally, the Government may waive informalities and minor irregularities in proposals received.

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of a proposal, 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 by the Contracting Officer before award.

(End of provision)

852.273-74 Award Without Exchanges.

As prescribed in [873.110\(e\)](#), insert the following provision:

AWARD WITHOUT EXCHANGES (NOV 2021)

The Government intends to evaluate proposals and award a contract without exchanges with Offerors. Therefore, each initial proposal 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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SUBCHAPTER H—CLAUSES AND FORMS

PART 853—FORMS

(Revised 11/17/2022)

Sec.

853.000 Scope of part.

Subpart 853.1—General

853.107 Obtaining forms.

Subpart 853.2—Prescription of Forms

853.219 Small business forms.

853.236 Construction and architect-engineer contracts.

853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.

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

853.236-72 VA Form 10101, Contractor Production Report.

Subpart 853.3—Illustration of Forms

853.300 Scope of subpart.

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

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853.000 Scope of part.

This part prescribes VA forms for use in the acquisition of goods and services. It only identifies forms that are used between VA and its contractors or the general public. It does not identify forms for uses internal to VA or between VA and another Federal agency.

SUBPART 853.1—GENERAL**853.107 Obtaining forms.**

VA forms may be obtained online at <https://www.va.gov/vaforms/> or upon request from any VA contracting office.

SUBPART 853.2—PRESCRIPTION OF FORMS**853.219 Small business forms.**

(a) *VA Form 2268, Small Business Program and Contract Bundling Review.* VA Form 2268 is prescribed for use to document actions and recommendations related to small business, as specified in [819.202](#).

(b) *VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Businesses.* VA Form 0896A is prescribed for use to submit subcontracting information, as specified in [819.704-70](#).

(c) *Availability.* Forms are available at <https://www.va.gov/vaforms/>.

853.236 Construction and architect-engineer contracts.**853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.**

VA Form 6298 is prescribed for use by contractors to submit proposals, as specified in See [836.7001\(a\)](#).

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

VA Form 2138 is prescribed for use to order supplies or services, including task orders for construction or A-E services, as specified in [836.7001\(b\)](#).

853.236-72 VA Form 10101, Contractor Production Report.

VA Form 10101 is prescribed for use by contractors to submit required information to the resident engineer, as specified in [836.7001\(c\)](#).

SUBPART 853.3—ILLUSTRATION OF FORMS

853.300 Scope of subpart.

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with [853.107](#). VA forms may also be available on the Web at <http://www.va.gov/vaforms/>.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 870 [RESERVED]

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SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 871—VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

(Revised 11/1/2021)

Subpart 871.1 (RESERVED)

Subpart 871.2 - Vocational Rehabilitation and Employment Service

871.200	Scope of subpart.
871.201	General.
871.201-1	Requirements for the use of contracts.
871.205	Proration of charges.
871.206	Other fees and charges.
871.207	Payment of tuition or fees.
871.208	Rehabilitation facilities.
871.209	Records and reports.
871.210	Prohibition on advertising—training of Veterans.
871.211	Information concerning correspondence courses.
871.212	Contract clauses.

Authority: 38 U.S.C. Chapter 31; 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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Subpart 871.1 - (RESERVED)**871.200 Scope of subpart.**

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

- (a) Contracts for training and rehabilitation services.
- (b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31.
- (c) Contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36.

871.201 General.**871.201-1 Requirements for the use of contracts.**

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

(a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses* means those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

871.205 Proration of charges.

A contract must include the exact formula agreed on for the proration of charges in the event that the Veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a chapter 31 participant, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with Part [813](#).

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as a registration fee, etc.

(d) The period for which payment of charges may be made is the period of actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

871.208 Rehabilitation facilities.

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements must provide for the number and frequency of reports, adequate financial records to support payment for each trainee, and maintenance of attendance and progress records. Such records must be preserved for a period of three years.

871.210 Prohibition on Advertising—Training of Veterans.

The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training Veterans must not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under 38 U.S.C. Chapter 31 and must not be directed or pointed specifically to Veterans.

871.211 Contract clauses.

(a) Contracting officers must use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

- (1) [852.271-72](#) Time Spent by Counselee in Counseling Process.
- (2) [852.271-73](#) Use and Publication of Counseling Results.
- (3) [852.271-74](#) Inspection of Instruction, Counseling or Testing Operations.

(b) See [837.110-70\(a\)](#) for clause [852.237-74](#), Non-Discrimination in Service Delivery.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 872 [RESERVED]

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SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES

(Revised 2/16/23)

Sec.

- 873.101 Policy.
- 873.102 Definitions.
- 873.103 Priority sources.
- 873.104 Competition requirements.
- 873.105 Acquisition planning.
- 873.106 Exchanges with industry before receipt of proposals.
- 873.107 Socioeconomic programs.
- 873.108 Publicizing contract actions.
- 873.109 General requirements for acquisition of health-care resources.
- 873.110 Solicitation provisions.
- 873.111 Acquisition strategies for health-care resources.
- 873.112 Evaluation information.
- 873.113 Exchanges with offerors.
- 873.114 Best value pool.
- 873.115 Proposal revisions.
- 873.116 Source selection decision.
- 873.117 Award to successful offeror.
- 873.118 Debriefings.

Authority: 38 U.S.C. 8127-8128; 38 U.S.C. 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 through 1.304.

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PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES**873.101 Policy.**

(a) *General.* In accordance with 38 U.S.C. 8153, to secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the Department of Veterans Affairs (VA) may make arrangements by contract for the mutual use, or exchange of use, of health-care resources between VA health-care facilities and any health-care provider, or other entity or individual. This part prescribes simplified procedures for contracts with entities not affiliated with VA under 38 U.S.C. 7302 to secure health-care resources that are a commercial service, or the use of medical equipment or space. VA may enter into such a contract if such resources are not, or would not be, used to their maximum effective capacity. (38 U.S.C. 8153)

(b) *Precedence.* The procedures in this part shall be used in conjunction with the Federal Acquisition Regulation ([FAR](#)) and other parts of the VA Acquisition Regulation ([VAAR](#)). However, when a policy or procedure in the FAR or another part of the VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. (38 U.S.C. 8153)

873.102 Definitions.

Commercial service means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

Health-care providers include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

Health-care resource includes hospital care and medical services (as those terms are defined in 38 U.S.C. 1701 and services under 38 U.S.C. 1782 and 1783) any other health-care service, and any health-care support or administrative resource. (38 U.S.C. 8153)

873.103 Priority sources.

Except for the acquisition of covered services available from the Committee for Purchase From People Who Are Blind or Severely Disabled and the AbilityOne Program (see [FAR subpart 8.7](#)), there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space in accordance with [808.002\(a\)\(2\)](#) and [873.107](#). (38 U.S.C. 8153)

873.104 Competition requirements.

(a) *Affiliated institutions.* (1) A health-care resource may be acquired on a sole source basis if a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the VA in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers. (38 U.S.C. 8153(a)(3)(A))

(2) Acquisitions of health-care resources identified in paragraph (a)(1) of this section are not required to be publicized as otherwise required by [873.108](#) or [FAR 5.101](#).

(b) *Non-affiliated entities.* (1) If the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a)(1) of this section, contracting officers shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation for the resource to be procured, and provide for the consideration by VA of bids, proposals, or quotations so submitted. (38 U.S.C. 8153(a)(3)(B))

(2) Acquisition of health-care resources identified in paragraph (b)(1) of this section shall be publicized as otherwise required by [873.108](#). Moreover, for any such acquisition described in paragraph (b)(1) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in [FAR 6.303](#). (38 U.S.C. 8153(a)(3)(D))

873.105 Acquisition planning.

(a) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher-level designee. At a minimum, the team must include the contracting officer and a representative of the Office of General Counsel and the requesting service. (38 U.S.C. 8153)

(b) The contracting officer or the acquisition team, as appropriate, must conduct market research, including satisfying the requirements of [808.002\(a\)\(2\)](#) and [873.107](#), Socioeconomic programs, and a VA Rule of Two determination ([819.502-2](#)). It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately

disseminated as set forth in [873.107](#). (38 U.S.C. 8153)

(c) In lieu of the requirements of [FAR part 7](#) addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in [FAR 7.105](#). Formal written minutes—summarizing decisions, actions, and conclusions—shall be prepared and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

Deviation per [Class Deviation](#) from VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873, dated February 16, 2023, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023. The class deviation updates various VAAR parts to implement the new policy regarding the SBA Veteran Small Business Certification Program, the relevant SBA certification database, and removing the VA VIP database title and web address, and other pertinent information.

873.106 Exchanges with industry before receipt of proposals. (DEVIATION)

(a) Exchange of information among all interested parties involved in an acquisition described in [873.104\(b\)](#), from the earliest identification of a requirement through release of the solicitation, is encouraged. Any exchange of information must be consistent with procurement integrity requirements in [FAR 3.104](#). The nature and extent of exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research in accordance with [FAR 10.002\(b\)](#), which shall be followed to the extent that the provisions therein would provide relevant information;
- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft requests for proposals (RFPs);

- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (e.g., Internet);
- (11) Use of the System for Award Management (SAM) (see <http://www.sam.gov/>); and
- (12) Researching the SBA certification database at <https://veterans.certify.sba.gov/>.

873.107 Socioeconomic programs. (DEVIATION)

(a) The Veterans First Contracting Program in VAAR subpart [819.70](#) takes precedence over other small business programs. (38 U.S.C. 8127-8128)

(b)(1) Except for contract actions subject to [808.002\(a\)\(2\)](#), competitive contract actions not otherwise excluded under this part shall be set-aside for certified service-disabled veteran-owned small business (SDVOSB) concerns or veteran-owned small business (VOSB) concerns, listed in the SBA certification database if the contracting officer has a reasonable expectation that two or more eligible certified small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127-8128)

(2) The contracting officer shall proceed with the acquisition under the simplified procedures of this part considering priority sources (see [808.002\(a\)\(2\)](#) and [873.103](#)) and preferences for other small businesses in accordance with [819.203-70](#) and [819.7004](#). (38 U.S.C. 8153)

(c) Without regard to [FAR 13.003\(b\)\(1\)](#), [19.203](#), [19.502](#), the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(d) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by 38 U.S.C. 8127 and 8128, as implemented in VAAR subpart [819.70](#), the Veterans First Contracting Program. Specifically, the contracting officer shall consider preferences for certified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for certified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small business concerns in accordance with FAR [19.203](#), [819.203-70](#) and [819.7004](#). (38

U.S.C. 8153)

873.108 Publicizing contract actions.

(a) All competitive acquisitions under this part, except as provided in paragraph (b) of this section, for dollar amounts in excess of the SAT, shall be publicly announced utilizing a medium designed to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Notice shall be published for a reasonable time prior to issuance of a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the request for quotation (RFQ) or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions described in [873.104\(a\)](#). However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from an institution not affiliated with the VA in accordance with 38 U.S.C. 7302, if conducted on a sole source basis, must still be justified and publicized (see [873.104\(b\)\(2\)](#)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under the procedures in this part must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part. (38 U.S.C. 8153)

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Unless the head of the contracting activity (HCA) appoints another individual to serve as the Source Selection Authority (SSA), the contracting officer shall be the SSA for acquisitions of health-care

resources, consisting of commercial services, or the use of medical equipment or space, utilizing the guidance contained in this part. (38 U.S.C. 8153)

(b) *Performance work statement/statement of work.* The performance work statement (PWS) or statement of work (SOW) must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR [13.106-3\(b\)](#), [13.501\(b\)](#), or [15.406-3](#), the contract file must include—

(1) A brief written description of the procedures used in awarding the contract;

(2) A written determination that the health-care resources being procured are not otherwise feasibly available or that utilization of such health-care resources is necessary to meet mission requirements;

(3) Documentation of market research and the results of such research;

(4) The number of offers received; and

(5) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.* (1) Without regard to [FAR 5.203](#), contracting officers shall set a reasonable time for receipt of quotations or proposals in the solicitations.

(2) Without regard to FAR [15.208](#) or [52.212-1\(f\)](#), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in [873.111\(d\)\(1\)\(ii\)](#) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government and a memorandum for the record is included in the solicitation file explaining the reasons for the cancellation. (38 U.S.C. 8153)

873.110 Solicitation provisions.

(a) As required in [873.109\(d\)](#), contracting officers shall set a reasonable time for receipt of quotations or proposals and shall insert the provision at [852.273-70](#), Late Offers, in all RFQs and RFPs exceeding the micro-purchase threshold. However, this provision shall not be used if the provision [852.273-71](#), Alternative Negotiation Techniques, is to be used. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at [852.273-71](#), Alternative Negotiation Techniques, when either of the alternative negotiation techniques described in [873.111\(d\)\(1\)](#) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at [852.273-72](#), Alternative Evaluation, in lieu of FAR provision [52.212-2](#), Evaluation—Commercial Items, when the alternative negotiation technique described in [873.111\(d\)\(1\)\(ii\)](#) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in [873.112](#), is to be used to select a contractor under a RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at [852.273-73](#), Evaluation—Health-Care Resources, in the RFQ or RFP in lieu of FAR provision [52.212-2](#). (38 U.S.C. 8153)

(e) As provided at [873.113\(f\)](#), if award may be made without exchange with offerors, the contracting officer shall include the provision at [852.273-74](#), Award Without Exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at [52.207-3](#), Right of First Refusal of Employment, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

873.111 Acquisition strategies for health-care resources.

The following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations (RFQ)*. (1) Without regard to FAR subparts [6.1](#) or [6.2](#), contracting officers must solicit a sufficient number of sources to promote competition

to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made. (see [FAR 13.004](#))

(2) For acquisitions in excess of the SAT, the procedures set forth in [FAR part 13](#) concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding.* [FAR part 14](#) provides procedures for sealed bidding.

(c) *Multiphase acquisition technique--(1) General.* Without regard to [FAR 15.202](#), multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror. (38 U.S.C. 8153)

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see [873.108](#)) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph. (38 U.S.C. 8153)

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information). (38 U.S.C. 8153)

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision. (38 U.S.C. 8153)

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision. (38 U.S.C. 8153)

(6) *Debriefing.* Without regard to [FAR 15.505](#), contracting officers must debrief offerors whose proposals are not accepted under a competitive request for proposals (RFP) as required by [873.118](#). (38 U.S.C. 8153)

(d) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see [FAR 3.104](#)). (38 U.S.C. 8153)

873.112 Evaluation information.

(a) Without regard to [FAR 15.304](#), Evaluation factors and significant subfactors (except for [15.304\(c\)\(1\)](#) and [\(c\)\(3\)](#), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)

873.113 Exchanges with offerors.

(a) Without regard to FAR [15.201](#) or [15.306](#), acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions are not applicable to acquisitions under this part. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see [873.114](#)). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, omissions, or deficiencies) in an Offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in [873.111\(d\)\(1\)](#), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts [3](#) and [24](#). (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered

necessary. (38 U.S.C. 8153)

873.114 Best value pool.

(a) Without regard to [FAR 15.306\(c\)](#), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

873.115 Proposal revisions.

(a) The contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard all proposals and revisions to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The SSA shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The SSA may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the SSA requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with [FAR 15.308](#). (38 U.S.C. 8153)

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

873.118 Debriefings.

Offerors whose proposals are not accepted under a competitive request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to [FAR 15.505](#), preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with [FAR 15.506](#). (38 U.S.C. 8153)

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