



# VA Acquisition Update

February 9, 2018

Number 2008-04

1. **Material Transmitted:** The attached pages contain interim revisions issued via approved Class Deviations to the Department of Veterans Affairs Acquisition Regulation (VAAR) Parts 808 and 836.

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

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based on active VAAR Class Deviations issued from September 9, 2010 through June 30, 2017 and still effective, until rescinded or incorporated into the official eCFR revised VAAR.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

<b>2008 VAAR Active Class Deviations (CD) July 2017 through February 9, 2018</b>			
<b>CD Title</b>	<b>Effective Date</b>	<b>VAAR Parts Affected</b>	<b>Summary of Change(s)</b>
Veterans Benefits Administration Authority for Architect-Engineer Services	Jul 20, 2017	836.602-2 836.602-4	This deviation grants the Veterans Benefits Administration (VBA) authority on Architect-Engineer (A-E) Services for VBA projects with an estimated value up to \$10,000,000.00 to perform evaluation boards and selection authority approving official functions.
Priorities for Use of Mandatory Government Sources	Feb 9, 2018	808.002	This Class Deviation supersedes Attachment 4 – Amendment 1 (VFCEP FEB 2017), dated March 1, 2017, and revises VAAR 808.002 to revert to the language and policy originally set forth in Class Deviation – Veterans First Contracting Program – Attachment 4 (VFCEP 2016), dated July 25, 2016. The new policy identifies AbilityOne (FAR subpart 8.7) as a mandatory source for the Department of Veterans Affairs. It clarifies policy regarding VAAR 808.002, Priorities for use of mandatory Government source, by adding to paragraphs (a)(1)(iii),(iv) and (a)(2) to further define use of VFCEP VA Rule of Two when considering procuring supplies or services on the AbilityOne Procurement List.

### 3. Filing Instructions:

<b>Remove pages:</b>	<b>Insert Pages:</b>
808-1 thru 808-10	808-1 thru 808-8
836-1 thru 836-12	836-1 thru 836-12

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

**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**

**PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

Sec.

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

**Subpart 808.4 – Federal Supply Schedules**

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

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

- 808.603 Purchase priorities

**Subpart 808.8 – Acquisition of Printing and Related Supplies**

- 808.802 Policy.

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

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**Part 808—Required Sources of Supplies and Services**

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

[Deviation per Class Deviation from VAAR 808.002, Priorities for Use of mandatory Government sources, dated February 9, 2018,, supersedes Attachment 4 – Amendment 1 (VFCP FEB 2017), dated March 1, 2017, and revises VAAR 808.002 to revert to the language and policy originally set forth in Class Deviation – Veterans First Contracting Program – Attachment 4 (VFCP 2016), dated July 25, 2016. This Class Deviation is needed to clarify that all supplies or services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7) are mandatory sources.]

**808.002 Priorities for use of mandatory Government sources.****(a)(1) Supplies.**

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

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

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

(iv) *Supplies or services that are on the Procurement List* maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7), are mandatory sources. However, VA contracting officers shall, prior to adding any new VA requirements to the Procurement List, conduct market research, apply the *VA Rule of Two* to consider Vendor Information Pages (VIP) verified service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) as required in 38 U.S.C. 8127 and implemented in subpart 819.70. All new VA requirements must be approved by the Chief Acquisition Officer, via the Senior Procurement Executive, before contacting the Committee for adding to the Procurement list.

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(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 (see FAR subpart 8.7).

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

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

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

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

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

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

- (1) Search the VIP database by applicable North American Industry Classification System (NAICS) code(s);
- (2) Determine if two or more verified SDVOSBs/VOSBs are listed by the NAICS code(s);
- (3) Determine if identified SDVOSBs or VOSBs are capable of performing the work and likely to submit an offer/quote at a fair and reasonable price that offers best value to the Government.
- (4) If criteria in (c)(1-3) are met, and if the existing contract vehicle represents, in the judgement of the contracting officer, the best business choice, the contracting officer shall set aside the requirement in the contracting order of priority (see 819.7005 and 819.7006) using the applicable provision and clause at 819.7009.
- (5) If the contracting officer determines existing contract vehicles are not suitable for award of a set-aside, an open market set-aside should be pursued.

#### **SUBPART 808.4 – FEDERAL SUPPLY SCHEDULES**

##### **808.402 General.**

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

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

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

(a) General. The Veterans First Contracting Program implemented in subpart 819.70 pursuant to 38 U.S.C 8127 and 8128 applies to VA contracts,

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BPA, and orders under [FAR 8.4](#) and has precedence over other small business programs.

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

(2) Set-asides for verified SDVOSBs and VOSBs are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more offers at a fair and reasonable price that offers best value to the Government. This mandate applies to contracting officers issuing BPAs and placing orders against the FSS. Because only verified SDVOSBs and VOSBs can participate on such set-asides, the contracting officer should start by reviewing verified firms in the VIP database, then determine if there is an existing contract vehicle (with priority preference for VA prime-vendor, national and VA FSS contracts) that is most appropriate. The VA Rule of Two for SDVOSBs and VOSBs, in that order, shall be applied in all instances. A set-aside restricted to verified SDVOSBs or VOSBs under 819.70 satisfies the competition requirement in the FAR.

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

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

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

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

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

(a) Pursuant to 38 U.S.C. 8127, contracting activities shall set aside BPAs and orders for SDVOSBs or VOSBs when indicated by market research. The



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set-aside authorities of 819.7005 and 819.7006 are mandatory whenever the contracting officer has a reasonable expectation of receiving two or more competitive offers/quotes at fair and reasonable prices that offer best value to the Government from SDVOSBs or VOSBs listed as verified in the VIP database.

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

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

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

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

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

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

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

When issuing BPAs or placing orders against the FSS, the contracting officer shall restrict competition to small businesses owned and controlled by

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veterans, when market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from verified SDVOSBs or VOSBs and award can be made at a fair and reasonable price that offers best value to the Government.

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

**808.603 Purchase priorities.**

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

**SUBPART 808.8 – ACQUISITION OF PRINTING AND RELATED SUPPLIES**

**808.802 Policy.**

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

**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**  
**PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

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

Sec.

836.202	Specifications.
836.203	Government estimate of construction costs.
836.204	Disclosure of the magnitude of construction projects.
836.206	Liquidated damages.
836.209	Construction contracts with architect-engineer firms.
836.213	Special procedures for sealed bidding in construction contracting.
836.213-4	Notice of award.
836.213-70	Notice to proceed.

**Subpart 836.5 – Contract Clauses**

836.500	Scope of subpart.
836.501	Performance of work by the contractor.
836.513	Accident prevention.
836.521	Specifications and drawings for construction.
836.570	Correspondence.
836.571	Reference to “standards.”
836.572	Government supervision.
836.573	Daily report of workers and materials.
836.574	Subcontracts and work coordination.
836.575	Schedule of work progress.
836.576	Supplementary labor standards provisions.
836.577	Worker’s compensation.
836.578	Changes – supplement.
836.579	Special notes.

**Subpart 836.6 – Architect-Engineer Services**

836.602	Selection of firms for architect-engineer contracts.
836.602-1	Selection criteria.
836.602-2	Evaluation boards.
836.602-4	Selection authority.
836.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold.
836.603	Collecting data on and appraising firms qualifications.
836.606	Negotiations.
836.606-70	General.
836.606-71	Architect-engineer’s proposal.

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836.606-72 Contract price.

836.606-73 Application of 6 percent architect-engineer fee limitation.

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

**SUBPART 836.2 – SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION**

**836.202 Specifications.**

(a) The procedures described in Part 811 are applicable to construction specifications.

(b) During the design stage, contract architect-engineers must not use “brand name or equal” or other restrictive specifications without the prior written approval of the contracting officer. The contracting officer must inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If VA has determined that only one product will meet the Government's minimum needs and VA will not allow the submission of “equal” products, the contracting officer must include the clause found at 852.236-90, Restriction on Submission and Use of Equal Products, in the solicitation and complete the clause by listing the items to which the clause applies. This clause places bidders on notice that the “brand name or equal” provisions of the clause found at FAR 52.236-5, Materials and Workmanship, and any other provision that may authorize the submission of an “equal” product, will not apply to the specific items listed.

**836.203 Government estimate of construction costs.**

The overall amount of the Government estimate must not be disclosed until after award of the contract. After award, the contracting officer may disclose the overall amount upon request.

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

In lieu of the estimated price ranges described in FAR 36.204, the contracting officer must identify the magnitude of a VA project in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000.
- (b) Between \$25,000 and \$100,000.
- (c) Between \$100,000 and \$250,000.
- (d) Between \$250,000 and \$500,000.
- (e) Between \$500,000 and \$1,000,000.

- (f) Between \$1,000,000 and \$2,000,000.
- (g) Between \$2,000,000 and \$5,000,000.
- (h) Between \$5,000,000 and \$10,000,000.
- (i) Between \$10,000,000 and \$20,000,000.
- (j) Between \$20,000,000 and \$50,000,000.
- (k) Between \$50,000,000 and \$100,000,000.
- (l) More than \$100,000,000

**836.206 Liquidated damages.**

The contracting officer may include a liquidated damages provision in a construction contract when the criteria of FAR 11.501 and 811.501 are met. If partial performance may be accepted and used to the advantage of the Government, the contracting officer must include the clause substantially as set forth in 852.211-74, Liquidated Damages, in addition to the clause set forth in FAR 52.211-12.

**836.209 Construction contracts with architect-engineer firms.**

(a) When the contracting officer considers it necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to a firm or person that designed the project, the contracting officer must request prior approval from one of the following:

(1) The facility or VISN director, as appropriate, or, for National Cemetery Administration contracts, the Director, Technical Support Service, for contracts involving nonrecurring maintenance (NRM) funds.

(2) The Director, Office of Construction and Facilities Management, for contracts involving construction funds.

(b) The contracting officer must furnish complete justification in the request.

(c) This section does not apply to design-build contracts, as defined at FAR 36.102.

**836.213 Special procedures for sealed bidding in construction contracting.****836.213-4 Notice of award.**

The contracting officer must provide to the contractor a notice of award (letter of acceptance) for any contract award in excess of \$25,000.

**836.213-70 Notice to proceed.**

(a) The contracting officer must provide construction contractors with a written notice to proceed for the work. A notice to proceed will normally be sent only after the contractor has provided performance and payment bonds or payment protection and the completed contract forms, where applicable, and the contracting officer has accepted them. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the contracting officer may include in the award letter a notice to proceed, with the reservation that payments are contingent upon receipt and approval of the required bonds or payment protection.

(b) If the contract provides for liquidated damages, the contracting officer must send the notice to proceed by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work must be completed within \_\_\_\_\_ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. In notices to proceed for these contracts, the contracting officer must establish a date for completion that takes into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, the contracting officer must furnish a copy to the resident engineer or the Chief, Engineering Service.

(e) The contracting officer must file a copy of the notice to proceed with copy A of the contract. When certified mail or other method of certified delivery is used, the contracting officer must attach the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service to the copy of the notice to proceed. The contracting officer must file copies of the notice to proceed with copies C and D of the contract after the date of receipt has been established and indicated on the notice to proceed.

## **SUBPART 836.5 – CONTRACT CLAUSES**

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

(a) The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.

(b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in Subpart 801.4.

(c) Clauses and provisions that differ from those contained in FAR Subparts 36.5 and 52.2 and this subpart, but considered essential to the procurement of VA requirements, shall not be used unless the deviation procedure set forth in Subpart 801.4 has been complied with.

### **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. When the solicitations or contracts include a section entitled “Network Analysis System (NAS),” the contracting officer must use the clause with its Alternate I.

### **836.513 Accident prevention.**

The contracting officer must insert the clause at 852.236-87, Accident Prevention, in solicitations and contracts for construction that contain the clause at FAR 52.236-13, Accident Prevention.

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

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

### **836.570 Correspondence.**

The contracting officer shall insert the clause at 852.236-76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction (currently \$2,000).



**836.571 Reference to “standards.”**

The contracting officer shall insert the clause at 852.236-77, Reference to “standards,” in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction.

**836.572 Government supervision.**

The contracting officer shall insert the clause at 852.236-78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction.

**836.573 Daily report of workers and materials.**

The contracting officer shall insert the clause at 852.236-79, Daily report of workers and materials, 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 solicitations and contracts for construction expected to exceed the micro-purchase threshold for construction. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

**836.575 Schedule of work progress.**

The contracting officer shall insert the clause at 852.236-84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction and that do not contain a section entitled “Network Analysis System (NAS).”

**836.576 Supplementary labor standards provisions.**

The contracting officer shall insert the clause at 852.236-85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

**836.577 Worker's compensation.**

The contracting officer shall insert the clause at 852.236-86, Workers' compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

**836.578 Changes – supplement.**

(a) The contracting officer shall insert the clause at 852.236-88, Contract changes – supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction. (This section has been promulgated as a deviation from the FAR as provided in 801.4.)

(b) When negotiated changes exceed \$500,000, paragraph (a) of the clause at 852.236-88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must furnish cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404-2.

(c) When the negotiated change will be \$500,000 or less, paragraph (b) of the clause at 852.236-88 will apply. Because the indirect cost rates in paragraph (b) of the clause at 852.236-88 are ceiling rates, the contracting officer must negotiate indirect expense rates within the ceiling limitations.

**836.578 Special notes.**

The contracting officer shall insert the clause at 852.236-91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold for construction.

**SUBPART 836.6 – ARCHITECT-ENGINEER SERVICES****836.602 Selection of firms for architect-engineer contracts.****836.602-1 Selection criteria.**

(a) In addition to the evaluation criteria set forth in FAR 36.602-1, the evaluation board must consider the factors set forth in paragraph (b) of this section as they apply to the project or purpose of the selection. Values must be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the pre-selection process. The board may adjust the assigned values after its discussions.

(b) The following factors must be considered:

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- (1) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.
- (2) Record of significant claims against the firm because of improper or incomplete architectural and engineering services.
- (3) Specific experience and qualifications of personnel proposed for assignment to the project and their record of working together as a team.

[Deviation per Class Deviation—Veterans Benefits Administration Authority for Architect-Engineer Services in VA Acquisition Regulation (VAAR) Subpart 836.6 (VAIQ 7800443), dated July 20, 2017 revises VAAR 836.602-2 and 836.602-4 to grant the Veterans Benefits Administration (VBA) authority on Architect-Engineer (A-E) Services for VBA projects with an estimated value up to \$10,000,000 to perform evaluation boards and selection authority approving official functions.]

**836.602-2 Evaluation boards.**

(a) The Associate Executive Director, Office of Construction and Facilities Management, Office of Engineering Operations Support shall appoint an evaluation board to select architect-engineer contractors for Office of Construction and Facilities Management projects. The Director, Office of Construction and Facilities Management, shall appoint an evaluation board to select architect-engineer contractors for National Cemetery Administration projects. The Director, Office of Administration and Facilities, Veterans Benefits Administration (VBA) shall appoint an evaluation board to select architect-engineer contractors for VBA projects with an estimated value up to \$10,000,000.00. The facility or VISN director, as appropriate, shall appoint an evaluation board to select architect-engineer contractors for field facility projects.

(b) The Director, A/E Evaluation and Program Support Service, will chair the evaluation board for Office of Construction and Facilities Management architect-engineer contracts; the Director, Office of Administration and Facilities will chair the evaluation for VBA architect-engineer contracts. The Chair may designate the Project Director or Project Manager to act as Chair when necessary. When appointing the board's members, the appointing Director must include the appropriate Project Manager and as many qualified professional architects or engineers as may be considered appropriate for the particular project, including additional members from the Office of Construction and Facilities Management technical services or from other Department administrations and staff offices when appropriate.

(c) The appointing Director shall ensure that the board consists of no fewer than three members, one of whom must be a National Cemetery Administration

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senior level contracting officer for National Cemetery Administration projects. The Director shall designate one of the board members as the Chair.

(d) The evaluation board for a VA field facility must consist of no fewer than two members, one of whom will be the HCA (or the senior contracting officer at the facility if there is no HCA on site) and the other will be the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, the facility or VISN director must appoint an additional engineer to the board. The Chair of the board will be the senior engineer.

**836.602-4 Selection authority.**

The Associate Director, Office of Construction and Facilities Management, Office of Facilities Acquisition (for Central Office contracts); the Director, Office of Construction Management (for National Cemetery Administration contracts); the Director, Office of Acquisition (for VBA contracts); or the facility or VISN director (for field facility contracts), as appropriate, or persons acting in those capacities, are designated as the approving officials for the recommendations of the respective evaluation boards.

**836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

Either of the procedures provided in FAR 36.602-5 may be used to select firms for architect-engineer contracts that are not expected to exceed the simplified acquisition threshold.

**836.603 Collecting data on and appraising firms qualifications.**

The Director, Office of Construction and Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery 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 General.**

To assure that the fee limitation is not violated, the contracting officer must maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

**836.606-71 Architect-engineer's proposal.**

(a) When the contract price is estimated to be \$50,000 or more, the contracting officer must use VA Form 10-6298, Architect-Engineer Fee Proposal,

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to obtain the proposal and supporting cost data from the proposed contractor and subcontractor in the negotiation of an architect-engineer contract for design services.

(b) In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, the contracting officer must use VA Form 10-6298 supplemented or modified as needed for the particular project type.

**836.606-72 Contract price.**

(a) Where negotiations with the top-rated firm are unsuccessful, the contracting officer shall, after authorization by the Director, Office of Construction and Facilities Management, the Director, Office of Construction Management, or the facility or VISN director, as appropriate, terminate the negotiations and undertake negotiations with the firm next in order of preference.

(b) The contracting officer shall submit a recommendation for award of the contract at the negotiated fee to the Director, Office of Construction and Facilities Management, the Director, Office of Construction Management, or the facility or VISN director, as appropriate. A copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, whenever a field pricing report has been received, a copy of the report must accompany the recommendation.

**836.606-73 Application of 6 percent architect-engineer fee limitation.**

(a) The total cost of the architect or engineer services contracted for must not exceed 6 percent of the estimated cost of the construction project plus any fees for related services and activities such as those shown in paragraph (c) of this section.

(b) To support project submissions, the engineering officer or project engineer must use VA Form 10-1193, Application for Health Care Facility Project, and Form 10-6238, EMIS Construction Program Estimate Worksheet, and must show the proposed technical services where necessary and applicable.

(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; and
  - (vi) Surveys: topographic, boundary, utilities, etc.
- (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 service 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; and
  - (iv) All other services that are not an integral part of the production and delivery of plans, designs, and specifications.
- (4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.