



VA Acquisition Update

October 12, 2018

Number 2008-07

- 1. Material Transmitted:** The attached pages contain interim revisions issued via approved Class Deviations to the Department of Veterans Affairs Acquisition Regulation (VAAR) Parts 801, 807, 809, 811, 813, 814, 819, 832, 852, and 853.
- 2. Summary of Changes:** This VA Acquisition Regulation Update provides text revisions based on active VAAR Class Deviations issued from February 9, 2018 through July 31, 2018 and still effective, until rescinded or incorporated into the official eCFR revised VAAR.

The changes are listed and summarized below:

2008 VAAR Active Class Deviations February 9-July 31, 2018

CD Title & Date	Effective Date	VAAR Parts Affected	Summary of Change(s)
<p>Update Head of Contracting Activity Delegation and Redelegation Authorities; and Increase a Threshold for Review of Acquisition Plans</p> <p>Mar 8, 2018</p>	<p>Apr 1, 2018</p>	<p>801.602-71, 809.405, 809.405-1, 809.405-2, 811.103, 811.202, 814.407-3, 814.407-4, 832.201-1, 832.501-2</p>	<p>In this class deviation, the Acting Deputy Senior Procurement Executive approved additional Head of the Contracting Activity (HCA) delegation and redelegation authorities within various VAAR subparts, and the threshold for review of acquisition plans is increased. This deviation remains in effect until incorporated into the VAAR or the new VA Acquisition Manual (VAAM), or is otherwise rescinded. Note: Affected parts 814.407-3 and 814.407-4 on this class deviation were rescinded upon issuance of Final Rule at 83 FR 16206 on April 16, 2018, FR Doc. 2018-07833. Therefore, the HCA changes shown in the class deviation in affected parts 814.407-3 and 814.407-4 were incorporated into the VA Acquisition Manual (VAAM) at M814.407-3 and M814.407-4.</p>
<p>Written Acquisition Plans</p> <p>Mar 8, 2018</p>	<p>Mar 8, 2018</p>	<p>807.105-70</p>	<p>This class deviation establishes policy, thresholds, and acquisition plan requirements for Written Acquisition Plans. The threshold for requiring the preparation of a written acquisition plan, as required in FAR 7.105, is increased from \$1 million to \$7 million, notwithstanding streamlined versions of acquisition plans deemed required in FAR 7.103(e), 7.105, 7.107, and/or as required by the HCA, and rescinds Attachment 5 only, titled, "Part 807— Acquisition Planning," in VA Procurement Policy Memorandum (PPM) 2016-09, "Rescission of the 1997 Non-codified Material (Formerly the 1997 Veterans Affairs Acquisition Regulation (VAAR))," dated September 30, 2015. This deviation remains in effect until incorporated into the VAAR or the new VA Acquisition Manual (VAAM), or is otherwise rescinded.</p>
<p>VAAR 813.317 Forms and VAAR 853.213 Simplified Acquisition Procedures (SF's 18, 30, 44, 1165, 1149, and OF's 336, 347, and 348)</p> <p>Mar 30, 2018</p>	<p>Mar 31, 2018</p>	<p>813.307, 853.213</p>	<p>This class deviation increases the dollar threshold to not to exceed the Simplified Acquisition Threshold for use of VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expired July 31, 2018. Note: Replaced by July 28, 2018 Class Deviation, same subject.</p>

<p>VA Subcontracting Compliance Review Program</p> <p>Jun 27, 2018</p>	<p>July 16, 2018</p>	<p>819.72, 852.219-74, 852.219-75, 852.219-76</p>	<p>This class deviation adds new subpart 819.72 to implement the VA Subcontracting Compliance Review Program and rescinds Information Letter (IL) 001AL-11-15, Subcontracting Compliance Review Program, dated June 8, 2011. This deviation remains in effect until incorporated into the VAAR or the new VA Acquisition Manual (VAAM), or is otherwise rescinded.</p>
<p>VAAR 813.317 Forms and VAAR 853.213 Simplified Acquisition Procedures (SF's 18, 30, 44, 1165, 1149, and OF's 336, 347, and 348)</p> <p>Jul 27, 2018</p>	<p>August 1, 2018</p>	<p>813.307, 853.213</p>	<p>This class deviation increases the dollar threshold to not to exceed the Simplified Acquisition Threshold for use of VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expires July 31, 2019, unless otherwise rescinded.</p>

3. Filing Instructions:

Remove pages:	Insert Pages:
801-9 thru 801-12	801-9 thru 801-12
807-1 thru 807-4	807-1 thru 807-4
809-7 thru 809-16	809-7 thru 809-16
811-3 thru 811-12	811-3 thru 811-12
813-5 thru 813-8	813-5 thru 813-8
819-1 thru 819-2	819-1 thru 819-2
819-27 thru 819-28	819-27 thru 819-30
832-1 thru 832-2	832.1 thru 832.2
832-5 thru 832-10	832-5 thru 832-10
852-1 thru 852-78	852-1 thru 852-82
853-3 thru 853-4	853-3 thru 853-4

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

- (i) Why the procurement office was not used.
- (ii) Why the proposed contractor was selected.
- (iii) Other sources that were considered.
- (iv) A description of work to be performed or products to be furnished.
- (v) The estimated or agreed contract price.
- (vi) A citation of the appropriation available.
- (vii) A statement of whether the contractor has commenced performance.
- (viii) The name of the individual responsible for the unauthorized commitment.

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

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

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

801.602-70 General review requirements.

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

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

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

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

[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018 revises 801.602-71 action (b) to allow contracting office/peer review of acquisition plans up to \$7 million. Actions (i) and (k) are added to Table 801.602-71 to reflect new HCA delegations and redelegations. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

801.602-71 Basic review requirements.

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

Table 801.602-71

Action	Review Levels and Thresholds
(a) Interagency Acquisitions (Best Procurement Approach)	<ul style="list-style-type: none"> - ≤ \$7M: CO/Peer Review - \$7M-\$50M: One level above the CO - >\$50M: HCA or Designee
(b) Acquisition Plans	<ul style="list-style-type: none"> - ≤ \$7M: CO/Peer Review - \$7M-\$100M: One level above the CO - >\$100M: HCA or Designee
(c) Stop Work Orders – (Terminations)	<ul style="list-style-type: none"> - One Level above the CO for all Stop Work Orders - OGC Review

(d) Use of Letter Contracts	-One Level above the CO for all Letter Contracts -OGC Review
(e) BPAs for Supplies under Federal Supply Schedules (FSS) that are not issued by the National Acquisition Center (NAC).	- >\$50M: Business Clearance Review - >\$50M: OGC Review
(f) Use of Economic Price Adjustment (EPA) Clauses	-HCA or Designee for any use of EPA Clauses
(g) Use of Incentive Contracts	-HCA or Designee for any use of Incentive Contracts
(h) Option Year Contracts Exceeding 5 Years (VAAR 817.204)	-HCA or Designee for any use of Option Year Contracts Exceeding 5 Years
(i) Commercial Purchase Financing, Policy (VAAR 832.202-1)	-HCA must approve, before award, contracts that include unusual contract financing
(j) Commercial Interim or Advance Payment Terms (VAAR 832.402)	-HCA or Designee for any use of Commercial Interim or Advance Payment Terms
(k) Unusual Progress Payments (VAAR 832.501-2)	-HCA or Designee must approve contractor's request

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

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

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

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

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

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

801.602-74 Review requirements for an interagency agreement.

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

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

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

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

801.602-75 Review requirements – OGC.

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

Table 801.602-75	
Type of contract actions	Anticipated Contract Award Value
(a) Stop Work Orders (contract termination, final decision, cure letter, "show cause" notice)	All actions
(b) Use of Letter contracts (includes modifications)	All actions
(c) Disputes or claims from a contractor	All actions
(d) An assignment of claims	All actions
(e) Proposed novation agreements and change-of-name agreements	All actions
(f) Construction solicitations, contracts, task orders, and modifications (change orders)	\$7,000,000 or greater
(g) Supply or service solicitations, contracts, task orders, and modifications (change orders)	\$7,000,000 or greater

**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING
PART 807—ACQUISITION PLANNING**

Subpart 807.1 – Acquisition Plans

Sec.

807.103 Agency-head responsibilities.

807.105-70 Written acquisition plans.

Subpart 807.3 – Contractor Versus Government Performance

807.300 Scope of subpart.

807.304-77 Right of first refusal.

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

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SUBPART 807.1 – ACQUISITION PLANS**807.103 Agency-head responsibilities.**

The authority to prescribe procedures in [FAR 7.103](#) is delegated to the SPE and is further delegated to the DSPE.

[Deviation per Class Deviation to Veterans Affairs Acquisition Regulation (VAAR) 807.105-70, Written Acquisition Plans, dated March 8, 2018. The deviation increased the threshold for written acquisition plans required by [FAR 7.105](#) from \$1 million to \$7 million, notwithstanding streamlined versions of acquisition plans deemed required in [FAR 7.103\(e\)](#), [7.105](#), [7.107](#), and/or as required by the HCA. The deviation also provides guidance to the contracting officer. The deviation rescinds Attachment 5 only, titled, “Part 807—Acquisition Planning,” in VA Procurement Policy Memorandum 2016-09, “*Rescission of the 1997 Non-codified Material (Formerly the 1997 Veterans Affairs Acquisition Regulation(VAAR))*,” dated September 30, 2016.]

807.105-70 Written acquisition plans.

(a) *Policy.* In accordance with [FAR 7.102](#), the VA will perform acquisition planning and conduct market research for all acquisitions. The extent and nature of the acquisition planning documentation and the market research conducted will vary depending on complexity, urgency, estimated dollar value, etc.

(b) *Thresholds.* Written acquisition plans should address, at a minimum, those items as prescribed in [FAR 7.105](#), as required, in accordance with the following thresholds:

(1) Written acquisition plans are required at or above \$7 million. The Head of the Contracting Activity (HCA) may require completion of acquisition plans, to include use of streamlined formats, below \$7 million, when required due to unique or high-level interest or complexity. Irrespective of the requirement for a written acquisition plan, contracting officers and acquisition planners are required to perform acquisition planning and conducting market research in accordance with [FAR 7.102](#). Certain key information, such as contract type, milestone schedule, sources, government furnished information, government furnished property, and security, among other key [FAR 7.105](#) considerations, must be appropriately considered and documented in the file.

(2) Written acquisition plans shall be accomplished for all cost-reimbursement and other high-risk contracts (to include time-and-materials/labor hour type contracts) in accordance with [FAR 7.103\(e\)](#), at any dollar value.

(c) *Acquisition plan approvals.* Contracting officers are also required to prepare acquisition plans and obtain required acquisition plan approvals from

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required offices in accordance with HCA procedures, e.g., for items involving Information Technology (IT) or IT-related, contract bundling, consolidation, interagency agreements.

**SUBPART 807.3—CONTRACTOR VERSUS GOVERNMENT
PERFORMANCE**

807.300 Scope of subpart.

This subpart prescribes the use of VAAR clause at 852.207-70, Report of employment under commercial activities, when contracting for commercial services under Office of Management and Budget (OMB) Circular A-76 or VA's cost comparison process. The cost comparison process is used by VA to determine whether to use commercial or Government resources to provide commercial services.

807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal of Employment clause specified in [FAR 52.207-3](#), the contracting officer must include the clause "Report of Employment Under Commercial Activities" at 852.207-70 in all cost comparison solicitations where VA personnel may be displaced. This clause is primarily intended to verify that the contractor is meeting its obligation to provide Federal workers who are adversely affected by the contract award and who are qualified for the jobs the first opportunity for employment openings created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. To implement the clause, the contracting officer (or COTR) must first obtain a list of Federal personnel who will be adversely affected as a result of the anticipated contract from the servicing Human Resources Service office. The list should be requested as soon as a preliminary determination is made to contract out a function subject to OMB Circular A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

(a) Each medical facility may:

(1) Use its VISN QPL; and

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

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

(1) Each contracting office in the VISN.

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

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

SUBPART 809.4 – DEBARMENT, SUSPENSION, AND INELIGIBILITY

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

809.400 Scope of subpart.

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

809.402 Policy.

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

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

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

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

[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018 revises 809.405, 809.405-1, and 809.405-2 to change the HCA authority to redelegable. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

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

809.405-2 Restrictions on subcontracting.

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

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

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

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

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

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

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

809.406-2 Causes for debarment.

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

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

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

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

(1) "Willful and intentional" misrepresentations, for the purpose of debarment actions taken pursuant to subsection (b), are defined as

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misrepresentations concerning the status of the concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans resulting in an admission, criminal conviction, civil judgment, or administrative decision related to fraud or other criminal acts.

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

809.406-3 Procedures.

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

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

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

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

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

(f) The S&D Committee, upon the request of the contractor proposed for debarment, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument in person

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or through a representative. The contractor may supplement the oral presentation with written information and argument. VA shall conduct the proceeding in an informal manner and without requirement for a transcript.

(g) If the S&D Committee finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall refer the dispute to a designee for resolution pursuant to 809.470, Fact-finding procedures. The S&D Committee shall provide the contractor or individual the disputed material fact(s). Decisions and determinations of VA's CVE or OSDBU, such as status protest decisions, and size determinations of the SBA shall not be subject to dispute or fact-finding in proposed debarment actions. The S&D Committee and SDO shall accept these decisions and determinations as resolved facts.

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

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

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

809.406-4 Period of debarment.

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

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

- (1) VA has debarred the contractor;

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

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

809.407 Suspension.

809.407-1 General.

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

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

809.407-3 Procedures.

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

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

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

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accordance with [FAR 9.404](#).

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

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

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

809.470 Fact-finding procedures.

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

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

agency presents.

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

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

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

SUBPART 809.5 – ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

809.503 Waiver.

The HCA is delegated authority to waive any general rule or procedure of [FAR subpart 9.5](#). As provided at [FAR 9.503](#), this authority may not be redelegated.

809.504 Contracting officer responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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811.001 Definitions.

For the purposes of this part:

Brand name product means a commercial product described by brand name and make or model number or other appropriate nomenclature by which the product is offered for sale to the public by the particular manufacturer, producer or distributor.

Salient characteristics means those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are features that are identified in the specifications as a mandatory requirement that a proposed “equal” product or material must possess for the bid to be considered responsive.

SUBPART 811.1—SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

[[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018](#) adds section 811.103 to reflect that the authority cited at [FAR 11.103](#) is changed as delegable to the HCA and is redelegable to no level lower than Chief/Director of the contracting office. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

811.103 Market acceptance.

(a) The authority at 41.U.S.C. 3307(e) is delegated to the head of the contracting activity (HCA) who may further delegate this authority to no lower than the Chief/Director of the contracting office.

811.103-70 Technical industry standards.

Where items are required to conform to technical industry standards, such as those adopted by: Underwriters Laboratories, Inc.; Factory Mutual Laboratories; American Gas Association; American Society of Mechanical Engineers; National Electrical Manufacturers Association; American Society of Heating, Refrigerating and Air-Conditioning Engineers; or similar organizations, where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal, or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The contracting officer shall include the provision at 852.211-72, Technical industry standards, in solicitations requiring conformance to technical industry standards unless comparable provisions are contained in the item specification.

811.104 Use of brand name or equal purchase descriptions.**811.104-70 Brand name or equal purchase descriptions.**

(a) The specification writer may use purchase descriptions that contain references to one or more brand name products only in accordance with 811.104-71 through 811.104-75.

(b) Purchase descriptions that contain references to one or more brand name products must be followed by the words “or equal,” except when the acquisition of a specific brand name is fully justified under [FAR subpart 6.3](#) and 806.3. If more than one brand name is acceptable, the contracting officer should list the known acceptable brand name products in the solicitation.

(c) Where a “brand name or equal” purchase description is used, the contracting officer must give bidders an opportunity to offer products other than those specifically referenced by brand name. Following bid opening or receipt of offers, the contracting officer must determine if non-“brand name” substitute products fully meet the salient characteristics listed in the solicitation.

(d) When using a “brand name or equal” purchase description, the specification writer must set forth those salient physical, functional, or other characteristics of the referenced products that are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, the specification writer must specify this requirement. The purchase description must contain the following information to the extent available:

(1) Complete common generic identification of the item required.

(2) Applicable model, make, or catalog number for each brand name product referenced and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).

(4) Any other information necessary to describe the item required.

(e) When necessary to adequately describe the item required, the contracting officer may use an applicable commercial catalog description or pertinent extract if the description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer must insure that a copy of any catalog referenced (except a parts catalog) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (d) of this section, the specification writer must not include in a purchase description either minimum or maximum restrictive

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dimensions, weights, materials, or other salient characteristics that are unique to a brand name product or that would tend to eliminate competition or other products that are only marginally outside the restrictions. However, the specification writer may include in a purchase description restrictive dimensions, weights, materials, or other salient characteristic if:

(1) The user determines in writing that the restrictions are essential to the Government's requirements;

(2) The specification writer includes the brand name of the product in the purchase description; and,

(3) The contracting officer makes all other determinations required by 811.105.

(g) The contracting officer must include in the contract file, as appropriate, written justifications for using the “brand name or equal” description, the contracting officer’s determinations, and bidder submissions.

811.104-71 Purchase description clauses.

(a) When a solicitation uses “brand name or equal” purchase descriptions, the contracting officer must include in the solicitation the clause at 852.211-73, Brand name or equal, and the provision set forth at [FAR 52.214-21](#), Descriptive Literature. The contracting officer must review the requirements at [FAR 14.202-5](#) when using the descriptive literature provision.

(b) When a “brand name or equal” purchase description is included in an invitation for bids, the contracting officer shall insert the following after each item so described in the solicitation, for completion by the bidder:

Bidding on:
 Manufacturer _____ name _____
 Brand _____
 No. _____

811.104-72 Limited application of brand name or equal.

If the contracting officer determines that the clause at 852.211-73, Brand name or equal, applies to only certain line items of a solicitation, the requirements of 811.104-71(b) apply to those line items and the contracting officer must include a statement in the solicitation as follows:

The clause entitled “Brand name or equal” applies only to the following line items: [List the line items to which the clause applies]

811.104-73 Bid samples.

(a) When a solicitation contains “brand name or equal” purchase descriptions, the contracting officer must not require a bidder who offers brand name products, including component parts, referenced in the descriptions to furnish bid samples of the referenced brand name products.

(b) A solicitation may require the submission of bid samples in the case of a bidder offering "or equal" products. If bid samples are required, the contracting officer must include in the solicitation the provision set forth at [FAR 52.214-20](#), Bid Samples.

(c) A bidder must furnish all descriptive literature in accordance with and for the purpose set forth in the “Brand Name or Equal” clause, 852.211-73(c)(1) and (c)(2), even though bid samples may not be required.

811.104-74 Bid evaluation and award.

(a) A bid offering products that differ from brand name products referenced in a “brand name or equal” purchase description must be considered for award if the contracting officer determines in accordance with the terms of the clause at 852.211-73, Brand name or equal, that the offered products are clearly identified in the bid and are equal in all material respects to the products specified.

(b) In award documents, the contracting officer must include, or incorporate by reference, an identification of the specific products that the contractor is to furnish. The identification must include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. This requirement also applies when the descriptions of the end items contain “brand name or equal” purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.211-73, Brand name or equal, was applied to the component parts or accessories (see 811.104-72).

811.104-75 Procedure for negotiated procurements.

(a) The specification writer and contracting officer must use the policies and procedures prescribed in 811.104-70 through 811.104-74 as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The contracting officer may adapt the clause at 852.211-73, Brand name or equal, for use in negotiated procurements. When use of the clause is not practical (as may be the case in unusual and compelling urgency purchases), the contracting officer must inform suppliers that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products are equal in all material

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respects to the products referenced. The contracting officer must place decisions under this paragraph in writing for the contract file, as appropriate.

811.105 Items peculiar to one manufacturer.

(a) Except as provided in paragraph (b) of this section, the specification writer must write specifications in accordance with [FAR 11.002](#).

(b)(1) When the specification writer determines that a particular physical or functional characteristic of only one product will meet the minimum requirements of VA (see [FAR 11.105](#)) or that a “brand name or equal” purchase description must be used (see [FAR 11.104](#)), the specification writer must identify the item(s) for the contracting officer and do one of the following:

(i) Provide a full written justification of the reason the particular characteristic is essential to the Government's requirements.

(ii) Explain why the “brand name or equal” purchase description is necessary.

(2) The contracting officer makes the final determination whether restrictive specifications or “brand name or equal” purchase descriptions will be included in the solicitation.

811.107 Contract clauses.

(a) Insert the clause at 852.211-70, Service data manuals, paragraph (a), in solicitations and requests for proposals for technical medical and other technical equipment and devices issued by a field facility unless the facility Chief, Engineering Service, indicates that the service data manuals are not needed. The purpose of the clause is to require the manufacturer to provide VA a manual or groups of manuals that will allow for the in-house repair of the equipment purchased.

(b) Insert the clause at 852.211-70, Service data manuals, paragraph (b), in solicitations and requests for proposals for mechanical equipment (other than technical medical and other technical equipment and devices) issued by a field station.

SUBPART 811.2 – USING AND MAINTAINING REQUIREMENTS DOCUMENTS

[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018, revises section 811.202(b)(3) to reflect that the HCA authority is changed to redelegable to no level lower than Chief/Director of the contracting office.

Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

811.202 Maintenance of standardization documents.

(a) Military and departmental specifications. Contracting officers may, when it is advantageous to VA, use these specifications when procuring supplies and equipment costing less than the simplified acquisition threshold. When purchasing items of perishable subsistence, contracting officers may take into account only those exemptions set forth in paragraphs (b)(2) and (b)(3) of this section.

(b) Nutrition and Food Service specifications. (1) VA has adopted for use in the procurement of packinghouse products the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS) and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for VA use, are contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL.

(2) The military specifications for meat and meat products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, must be used by VA only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, may be used when purchasing either from DLA or from local dealers.

(3) Except as authorized in Part 846, a contracting officer must not deviate from the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, and the IMPS without prior approval from the HCA, who may further delegate this authority to no level lower than Chief/Director of the contracting office.

(4) Items of meat, cured pork and poultry purchased under the Subsistence Prime Vendor national contract or other local procurement sources should be purchased via Commercial Item Descriptions (CID) that require all products meet USDA Grading standards and/or the IMPS as applicable.

(c) Department of Veterans Affairs specifications. (1) The Director, Publications Staff, is responsible for developing, publishing, and distributing VA specifications covering printing and binding.

(2) VA specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. The contracting officer may requisition facility

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requirements for these specifications from that source.

(d) Government paper specification standards. (1) Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating, must require that the paper stocks be in accordance with the Government Paper Specification Standards issued by the Congressional Joint Committee on Printing.

(2) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases, and boxes must be procured in accordance with Government Printing Office (GPO) specifications and must be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources.

(3) There are three types of binding/rebinding: Class A (hard cover); Perfect (glued); and Lumbinding (sewn). The most suitable type of binding must be procured to satisfy the requirements, based upon the intended use of the bound material.

811.204 Contract clause.

Insert the clause at 852.211-75, Product specifications when product specifications are cited in an invitation for bids or a request for proposals.

SUBPART 811.4 – DELIVERY OR PERFORMANCE SCHEDULES**811.404 Contract clause.**

When delivery is required by or on a particular date for f.o.b. destination contracts, the contracting officer must add a statement following the Time of Delivery clause in [FAR 52.211-8](#) that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the contracting officer must add a statement following this clause that the date specified is the date shipment is to be accepted by the carrier.

SUBPART 811.5 – LIQUIDATED DAMAGES**811.501 Policy.**

The contracting officer must not routinely include a liquidated damages provision in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions must conform to the criteria in [FAR 11.501](#). In making this decision, the contracting officer must consider whether the necessity for timely delivery or performance as required in the contract schedule is so critical that a probable increase in contract price is

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justified. The contracting officer must not use a liquidated damages provision for any of the following reasons:

- (a) As insurance against selection of a non-responsible bidder.
- (b) As a substitute for efficient contract administration.
- (c) As a penalty for failure to perform on time.

811.502 Contract clause.

When the contracting officer determines that the Liquidated damages clause prescribed in [FAR 52.211-11](#) or [52.211-12](#) must be used and where partial performance by the contractor may be to the advantage of the Government, the contracting officer must include the clause in 852.211-74, Liquidated damages, in the contract.

SUBPART 811.6 – PRIORITIES AND ALLOCATIONS**811.602 General.**

(a) Priorities and allocations of critical materials are controlled by the Department of Commerce. Essentially, priorities and allocations of critical materials are restricted to projects having a direct connection with supporting current defense needs. VA is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) When it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist the VA in obtaining critical materials for maintenance and repair projects. The Department of Commerce will also, when possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) A contracting officer having problems acquiring critical materials must ascertain all the facts necessary to enable the Department of Commerce to render assistance to VA in acquiring these materials. The contracting officer must submit a request for assistance to the DSPE containing the following information:

- (1) A description of the maintenance and repair project or the new item.
- (2) The critical material and the amount required.

(3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.

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- (4) The VA contract or purchase order number.
- (5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer.
- (6) The additional time the contractor claims is necessary to deliver the materials if priority assistance is not provided.
- (7) The nature and extend of the emergency that will be generated at the station, such as any of the following:
 - (i) Damage to the physical plant.
 - (ii) Impairment of the patient care program.
 - (iii) Creation of safety hazards.
 - (iv) Any other pertinent condition that could result because of failure to secure assistance in obtaining the critical materials.
- (8) If applicable, a statement that the item required is for use in a construction contract that was authorized by the Director, Office of Construction and Facilities Maintenance, to be awarded and administered by the facility contracting officer.

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

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

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

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

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

813.203 Purchase guidelines.

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

SUBPART 813.3 – SIMPLIFIED ACQUISITION METHODS

813.302 Purchase orders.

813.305-5 Clauses.

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

813.307 Forms.

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

- (1) VA Form 90-2138, Order for Supplies or Services.
- (2) VA Form 90-2139, Order for Supplies or Services (Continuation).
- (3) VA Form 90-2138-ADP, Purchase Order for Supplies or Services.
- (4) VA Form 2139-ADP, Order for Supplies and Services (Continuation).

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

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

- (1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.
- (2) VA Form 10-7079, Request for Outpatient Medical Services.
- (3) VA Form 10-2570d, Dental Record Authorization and Invoice for Outpatient Service.

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

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

[Deviation per Class Deviation—VAAR 813.307, Forms, and VAAR 853.213, Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348, dated March 31, 2017, as amended March 31, 2018 and July 27, 2018, increases the dollar threshold not to exceed the Simplified Acquisition Threshold for use of VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expires July 31, 2019, unless otherwise rescinded.]

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

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 819—SMALL BUSINESS PROGRAMS

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819.102 Size Standards

Subpart 819.2 – Policies

- 819.202-1 Encouraging small business participation in acquisitions.
- 819.202-5 Data collection and reporting requirements.
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- 819.202-72 [Reserved]
- 819.203-70 Priority for service-disabled veteran-owned small business/veteran-owned small business contracting preference.

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Subpart 819.5 – Set-Asides for Small Business

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Part 819—Small Business Programs

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819.7202 Types of subcontracting compliance reviews.

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

Part 819—Small Business Programs

(a) An increase in the quality of the technical capabilities of the protégé firm.

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program attributable to the mentor-protégé relationship (under VA contracts, contracts awarded by other Federal agencies and under commercial contracts.)

819.7115 Solicitation provisions.

(a) Insert 852.219-71, VA Mentor-Protégé Program, in solicitations that include FAR clause [52.219-9](#), Small Business Subcontracting Plan.

(b) Insert 852.219-72, Evaluation Factor for Participation in the VA Mentor-Protégé Program, in solicitations that include an evaluation factor for participation in VA's Mentor-Protégé Program in accordance with 819.7105 and that also include FAR clause [52.219-9](#), Small Business Subcontracting Plan.

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

Subpart 819.72—VA Subcontracting Compliance Review Program**819.7200 General.**

(a) The Department of Veterans Affairs (VA) is required by Pub. L. 109-461, Executive Order 13360, and the Small Business Act, to establish special acquisition methods to increase contracting and subcontracting opportunities for small businesses, and, in particular, SDVOSBs and VOSBs, while protecting access to the programs by their intended beneficiaries.

(b) In an effort to maintain integrity of these programs, the VA has developed a Subcontracting Compliance Review Program (SCRP), which assesses contractor compliance with limitations on subcontracting requirements, subcontracting commitments, and subcontracting goals included in a VA prime contract.

(c) These reviews will be conducted by either VA or a third party contractor on behalf of the VA as set forth in this subpart and the VA Subcontracting Compliance

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Review Program manual. The SCRP manual sets forth guidelines and procedures for conducting compliance reviews under the program.

(d) Contracting officers shall notify prospective contractors that Risk Management and Compliance Service, and/or a third party (support contractor) will require access to VA contractor records, as needed, to assess contractor compliance as provided in paragraph (b) of this section, by incorporating the clauses at 819.7203 as applicable.

819.7201 Scope of subcontracting compliance reviews.

(a) Any small business concern receiving a VA contract on a sole source or set aside basis or under a small business evaluation preference, will be subject to a review to ensure they are in compliance with the limitations on subcontracting requirement or percentage of work performance requirement provided in the appropriate set-aside/preference clause.

(b) Moreover, VA will assess contractors for compliance, regardless of their size status, to ensure they are adhering to any subcontracting commitments included in VA contracts by virtue of VAAR clause 852.215-71.

(c) Prime contractors that are other than small business concerns will also be assessed for compliance with their subcontracting plans and small business commitments. In addition, as required by 38 USC 8127(a)(4), OSDDBU will review prime contractor's subcontracting plan reports to ensure only verified SDVOSB and VOSB firms are counted toward those plan goals.

819.7202 Types of subcontracting compliance reviews.

(a) There are three (3) types of subcontracting compliance reviews that will be conducted under the Subcontracting Compliance Review Program:

(1) Limitations on Subcontracting Compliance Review (LSCR) for small business set-aside sole source or evaluated contracts.

(2) Subcontracting Commitments Compliance Review (SCCR) contracts awarded on the basis of an evaluation preference.

(3) Subcontracting Plan Compliance Review (SPCR) for prime contractors subject to subcontracting plan submissions.

(b) Follow-up reviews will be conducted as required in the SCRP manual.

(c) Compliance reviews may be conducted on-site or off-site, as appropriate. For purposes of this program, on-site compliance reviews mean reviews conducted at VA contractors' sites or facilities. Off-site compliance reviews are conducted at

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either a Government location or another facility (e.g., at the support contractor's facility conducting the reviews on behalf of VA).

819.7203 Contract clauses.

In addition to other applicable clauses, contracting officers shall:

(a) Include clause 852.219-74 Limitations on Subcontracting—Monitoring and Compliance, in VA solicitations and contracts which are—

(1) Sole-source or set-aside for service-disabled veteran-owned small businesses or veteran-owned small businesses under subpart 819.70;

(2) Sole source or set-aside for other types of small business pursuant to FAR part 19 and/or which contain the clause at [52.219-14](#), Limitations on Subcontracting; or

(3) Awarded based on an evaluation preference for being a small business (e.g., [FAR 52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns).

(b) Include clause 852.219-75, Subcontracting Commitments Monitoring and Compliance, in VA solicitations and contracts which will be issued on a competitively negotiated basis, including RFQs for task/delivery orders or BPAs, which:

(1) Require a statement of work,

(2) Are not set-aside for SDVOSB/VOSB; and

(3) Include any evaluation criteria in addition to price, such as 852.215-70, SDVOSB/VOSB Evaluation Factors.

(c) Include clause 852.219-76, Subcontracting Plans Monitoring and Compliance, in VA solicitations and contracts where FAR clause [52.219-9](#) and/or VAAR 852.219-9 are applicable.

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**SUBCHAPTER E—GENERAL CONTRACTING
REQUIREMENTS**

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

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[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018, revises section 832.202-1 to reflect that authority is changed as delegated to the HCA, and that the HCA must approve, before award, contracts that include unusual contract financing. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

832.202-1 Policy.

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

832.202-4 Security for Government financing.

An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information to establish the offeror's financial capability and to determine the offeror's financial condition:

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

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

(c) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial crisis, and credit arrangements.

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

(e) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance,

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planned capital expenditures, pending claims, contingent liabilities, and other financial aspects of the business.

(f) Any other financial information deemed necessary.

(g) A Dun and Bradstreet Report on the company.

SUBPART 832.4 – ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

[Deviation per Class Deviation 832.202-1 and 832.402 (VAIQ 7640793), dated December 2, 2015, to delegate approval authority from the DSPE to the HCAs or designee for making findings and determinations and approval of contract terms for advance payments.]

832.402 General.

(c)(1)(iii) The authority to make the determination required by [FAR 32.402\(c\)\(1\)\(iii\)](#) and to approve contract terms is delegated to the head of the contracting activity (HCA). The request for approval shall include the information required by [FAR 32.409-1](#) and shall address the standards for advance payment in [FAR 32.402\(c\)\(2\)](#). HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on number of contracts for non-commercial items with advance payments approved in the previous fiscal year. The report shall include the contract number and amount, the amount of the advance payment, and the kind and amount of security obtained for the advance.

832.404 Exclusions.

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

(b) Under 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(c) Under 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

SUBPART 832.5 – PROGRESS PAYMENTS BASED ON COSTS

[Deviation per Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelegation Authorities; and Increase the Threshold for Review of Acquisition Plans, dated March 8, 2018, adds section 832.501-2 to reflect that the HCA authority cited at [FAR 32.501-2](#) is changed to redelegable to one level above the contracting officer, or a Director of Contracting for VHA. Effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

832.501 General.

832.501-2 Unusual Progress Payments.

(a)(3) The contracting officer's request is approved by the HCA. The HCA may delegate this approval authority to no lower than one level above the contracting officer, or to a Director of Contracting for the Veterans Health Administration (VHA).

832.502 Pre-award matters.

832.502-2 Contract finance office clearance.

Contracting officers must obtain approval from the DSPE before taking the actions listed in [FAR 32.502-2](#). Full justification and the recommendations of the contracting officer must accompany requests for approval.

SUBPART 832.8 – ASSIGNMENT OF CLAIMS

832.805 Procedure.

832.805-70 Distribution/notification of assignment of claims.

(a) Prior to acknowledgement of receipt, in addition to the requirements of [FAR 32.805\(d\)](#), the contracting officer shall obtain legal review of the assignment (see 801.602-75(a)(7)). Upon acknowledgement of receipt, the contracting officer shall:

(1) File the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the Government Accountability Office copy of the contract; and

(2) Forward a copy of the notice of assignment and instrument of assignment to the local finance office and to the payment office cited in the contract.

(b) Contracting officers must notify field facilities of any recognized assignment of payments for contracts under which payment for articles and services is certified and approved for payment in the field.

SUBPART 832.9 – PROMPT PAYMENT

832.904 Determining payment due dates.

(a) When preparing specification packages, contracting officers must give full consideration to the time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments. Based on this analysis, contracting officers may, when authorized by [FAR 32.904](#), modify the number of days allowed for notifying contractors of defects in invoices or, for construction solicitations, the number of days allowed for payment of invoices specified in the applicable prompt payment clause. Changes, if any, should be made before issuing the solicitation.

(b)(1) For construction solicitations, the analysis specified in paragraph (a) of this section may routinely take more than the 7 days provided in paragraph (a)(2) of the FAR clause at [52.232-27](#), Prompt Payment for Construction Contracts, to evaluate and return defective progress payment invoices.

(2) It also may take more than the 14 days provided in paragraph (a)(1)(i)(A) of the prompt payment clause to adequately inspect the work, determine the adequacy of the contractor's performance, approve, and pay progress payment invoices.

(3) Contracting officers should consider the following and, if necessary, revise the number of days stated in paragraphs (a)(2) and (a)(1)(i)(A) of the prompt payment clause before issuing construction solicitations (see [FAR 32.904\(d\)\(1\)\(i\)](#)):

- (i) Recent interest payment history.
- (ii) The complexity of the project.
- (iii) Workload.
- (iv) Work site location.

(4) In no event may the number of days be set in excess of 14 days

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for return of a defective progress payment invoice or 30 days for payment of the invoice.

SUBPART 832.11 – ELECTRONIC FUNDS TRANSFER

832.1106 EFT mechanisms.

(a) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT mechanisms other than those authorized under [FAR 32.1106\(a\)](#).

(b) The Assistant Secretary for Management may, with the concurrence of the Department of the Treasury office responsible for making payment, authorize the use of EFT for payments to be received by or on behalf of a contractor outside the United States or Puerto Rico or for contracts paid in other than United States currency, as provided in [FAR 32.1106\(b\)](#).

**SUBPART 832.70—ELECTRONIC INVOICING
REQUIREMENTS**

832.7000 General.

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

832.7001 Definitions.

As used in this subpart:

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

(b) *Designated agency office* has the meaning given in [5 CFR 1315.2\(m\)](#).

(c) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in VAAR 832.7002-1. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(d) *Invoice payment* has the meaning given in [FAR 32.001](#).

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

832.7002 Electronic payment requests.

(a) The contractor shall submit payment requests in electronic form unless

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

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.7002-1 Data transmission.

The contractor shall submit electronic payment requests through:

(a) VA's Electronic Invoice Presentment and Payment System (See Web site at <https://www.fsc.va.gov/einvoice.asp>); or,

(b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

832.7002-2 Contract clause.

The contracting officer shall insert the clause at 852.232-72, Electronic submission of payment requests, in all solicitations and contracts.

SUBCHAPTER H—CLAUSES AND FORMS**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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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 1702; and 48 CFR 1.301-1.304.

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Subpart 852.1 – Instructions for Using Provisions and Clauses**852.101 Using part 852.**

Part 852 prescribes supplemental provisions and clauses to the FAR. Provision and clause numbering are as prescribed in [FAR 52.101](#) (e.g., supplementary construction clauses under Part 836 are numbered 852.236-71, 852.236-72, etc.).

852.102 Incorporating provisions and clauses.

(a) As authorized by [FAR 52.102\(c\)](#), any 48 CFR Chapter 8 (VAAR) provision or clause may be incorporated in a quotation, solicitation, or contract by reference, provided the contracting officer complies with the requirements stated in [FAR 52.102\(c\)\(1\), \(c\)\(2\), and \(c\)\(3\)](#). To ensure compliance with [FAR 52.102\(c\)\(1\) and \(c\)\(2\)](#), contracting officers shall insert the provision found at 852.252-70, Solicitation provisions or clauses incorporated by reference, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

(b) For any FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert the title of the provision or clause and the paragraph that requires completion in full text in the quotation, solicitation, or contract. The balance of the provision or clause may be incorporated by reference.

(c) When one or more FAR or 48 CFR Chapter 8 (VAAR) provisions, or portions thereof, are incorporated in a quotation or solicitation by reference, the contracting officer shall insert in the quotation or solicitation the provision found at [FAR 52.252-1](#), Solicitation Provisions Incorporated by Reference.

(d) When one or more FAR or 48 CFR Chapter 8 (VAAR) clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the quotation, solicitation, or contract the clause found at [FAR 52.252-2](#), Clauses Incorporated by Reference.

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address:
<http://www.acquisition.gov/comp/far/index.html>

(f) If one or more 48 CFR Chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <http://www1.va.gov/oamm/acquisitions/ars/policyreg/vaar/index.htm>

Subpart 852.2 – Texts of Provisions and Clauses

(Revised 3/23/2018)

852.203-70 Commercial advertising.

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

COMMERCIAL ADVERTISING (JAN 2008)

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor.

(End of clause)

852.203-71 Display of Department of Veterans Affairs hotline poster.

As prescribed in 803.7001, insert the following clause:

DISPLAY OF DEPARTMENT OF VETERANS AFFAIRS HOTLINE POSTER (DEC 1992)

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently, in common work areas within business segments performing work under VA contracts, Department of Veterans Affairs Hotline posters prepared by the VA Office of Inspector General.

(b) Department of Veterans Affairs Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043-4647.

(c) The Contractor need not comply with paragraph (a) above if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-77 and 873.110, the following clause will be included in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 that may result in conversion from in-house to contract performance of work:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (JAN 2008)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal personnel the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.*

(1) *Adversely affected Federal personnel* means:

(i) Permanent Federal personnel who are assigned to the government commercial activity, or

(ii) Federal personnel who are identified for release from their competitive levels or separated as a result of the contract.

(2) *Employment openings* means position vacancies created by this contract that the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award. The term includes positions within a 50-mile radius of the commercial activity that indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) *Contract start date* means the first day of contractor performance.

(c) Filling employment openings.

(1) For a period beginning with contract award and ending 90 calendar days after the contract start date, no person other than adversely affected Federal personnel on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal personnel identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal personnel on the latest current listing provided by the contracting officer.

(d) Contracting reporting requirements.

(1) No later than 5 working days after contract award, the contractor shall furnish the contracting officer with the following:

- (i) A list of employment openings including salaries and benefits, and
- (ii) Sufficient job application forms for adversely affected Federal personnel.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

- (i) The names of adversely affected Federal personnel offered an employment opening;
- (ii) The date the offer was made;
- (iii) A brief description of the position;
- (iv) The date of acceptance of the offer and the effective date of employment;
- (v) The date of rejection of the offer, if applicable, and the salary and benefits contained in the rejected offer; and
- (vi) The names of any adversely affected Federal personnel who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 calendar days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within 5 working days of such hiring or termination.

(e) Information provided to the contractor.

(1) No later than 10 calendar days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal personnel exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected Federal personnel to other Federal positions.

(3) For a period of up to 90 calendar days after the contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal personnel reflecting personnel who were recently released from their competitive levels or separated as a result of the contract award.

(f) Qualifications determination. The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal personnel for any employment openings. However, adversely affected Federal personnel who held jobs in the Government commercial activity that directly correspond to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal personnel for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) Relating to other statutes, regulations and employment policies. The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities, or persons with disabilities.

(h) Penalty for noncompliance. Failure of the contractor to comply with any provision of the clause may be grounds for termination for default.

(End of clause)

852.209-70 Organizational conflicts of interest.

As prescribed in 809.507-1(b), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST (JAN 2008)

(a) It is in the best interest of the Government to avoid situations which might create an organizational conflict of interest or where the offeror's performance of work under the contract may provide the contractor with an unfair competitive advantage. The term "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage.

(b) The offeror shall provide a statement with its offer which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

(c) Based on this information and any other information solicited or obtained by the contracting officer, the contracting officer may determine that an organizational conflict of interest exists which would warrant disqualifying the contractor for award of the contract unless the organizational conflict of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the contracting officer finds that it is in the best interest of the United States to award the contract, the contracting officer shall request a waiver in accordance with [FAR 9.503](#) and 48 CFR 809.503.

(d) Nondisclosure or misrepresentation of actual or potential organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of provision)

852.211-70 Service data manuals.

(a) As prescribed in 811.107(a), insert the following clause:

SERVICE DATA MANUALS (NOV 1984)

(a) The successful bidder will supply operation/maintenance (service data) manuals with each piece of equipment in the quantity specified in the solicitation and resulting purchase order. As a minimum, the manual(s) shall be bound and equivalent to the manual(s) provided the manufacturer's designated field service representative as well as comply with all the requirements in paragraphs (b) through (i) of this clause. Sections, headings and section sequence identified in through (i) of this clause are typical and may vary between manufacturers. Variances in the sections, headings and section sequence, however, do not relieve the manufacturer of his/her responsibility in supplying the technical data called for therein.

(b) Title Page and Front Matter. The title page shall include the equipment nomenclature, model number, effective date of the manual and the manufacturer's name and address. If the manual applies to a particular version of the equipment only, the title page shall also list that equipment's serial number. Front matter shall consist of the Table of Contents, List of Tables, List of Illustrations and a frontispiece (photograph or line drawing) depicting the equipment.

(c) Section I, General Description. This section shall provide a generalized description of the equipment or devices and shall describe its purpose or intended use. Included in this section will be a table listing all pertinent equipment specifications, power requirements, environmental limitations and physical dimensions.

(d) Section II, Installation. Section II shall provide pertinent installation information. It shall list all input and output connectors using applicable reference designators and functional names as they appear on the equipment. Included in this listing will be a brief description of the function of each connector along with the connector type. Instructions shall be provided as to the recommended method of repacking the equipment for shipment (packing material, labeling, etc.).

(e) Section III, Operation. Section III will fully describe the operation of the equipment and shall include a listing of each control with a brief description of its function and step-by-step procedures for each operating mode. Procedures will use the control(s) nomenclature as it appears on the equipment and will be keyed to one or more illustrations of the equipment. Operating procedures will include any preoperational checks, calibration adjustments and operation tests. Notes, cautions and warnings shall be set off from the text body so they may easily be recognizable and will draw the attention of the reader. Illustrations should be used wherever possible depicting equipment connections for test, calibration, patient monitoring and measurements. For large, complex and/or highly versatile equipment capable of many operating modes and in other instances where the Operation Section is quite large, operational information may be bound separately in the form of an Operators Manual. The providing of a separate Operators manual does not relieve the supplier of his responsibility for providing the minimum acceptable maintenance data specified herein. When applicable, flow charts and narrative descriptions of software shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions that are software related.

(f) Section IV, Principles of Operation. This section shall describe in narrative form the principles of operation of the equipment. Circuitry shall be discussed in sufficient detail to be understood by technicians and engineers who possess a working knowledge of electronics and a general familiarity with the overall application of the devices. The circuit descriptions should start at the overall equipment level and proceed to more detailed circuit descriptions. The overall description shall be keyed to a functional block diagram of the equipment. Circuit descriptions shall be keyed to schematic diagrams discussed in paragraph (i) below. It is recommended that for complex or special circuits, simplified schematics should be included in this section.

(g) Section V, Maintenance. The maintenance section shall contain a list of recommended test equipment, special tools, preventive maintenance instructions and corrective information. The list of test equipment shall be that recommended by the manufacturer and shall be designated by manufacturer and model number. Special tools are those items not commercially available or those that are designed specifically for the equipment being supplied. Sufficient data will be provided to enable their purchase by the Department of Veterans Affairs. Preventive maintenance instructions shall consist of those recommended by the manufacturer to preclude unnecessary failures. Procedures and the recommended frequency of performance shall be included for visual inspection, cleaning, lubricating, mechanical adjustments and circuit calibration. Corrective maintenance shall consist of the data necessary to troubleshoot and rectify a problem and shall include procedures for realigning and testing the equipment. Troubleshooting shall include either a list of test points with the applicable voltage levels or waveforms that would be present under a certain prescribed set of conditions, a troubleshooting chart listing the symptom, probable cause and remedy, or a narrative containing sufficient data to enable a test technician or electronics engineer to determine and locate the probable cause of malfunction. Data shall also be provided describing the preferred method of repairing or replacing discrete components mounted on printed circuit boards or located in areas where special steps must be followed to disassemble the equipment. Procedures shall be included to realign and test the equipment at the completion of repairs and to restore it to its original operating condition. These procedures shall be supported by the necessary waveforms and voltage levels, and data for selecting matched components. Diagrams, either photographic or line, shall show the location of printed circuit board mounted components.

(h) Section VI, Replacement Parts List. The replacement parts list shall list, in alphanumeric order, all electrical/electronic, mechanical and pneumatic components, their description, value and tolerance, true manufacturer and manufacturers' part number.

(i) Section VII, Drawings. Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall

include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or production sketches.

(End of clause)

Alternate I (JAN 2008). If the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, insert the following paragraph:

(j) Initial purchase. The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.211-70(a) to the Service and Reclamation Division, Hines, IL. In addition, the contractor agrees to furnish two additional copies of the technical documentation required by 852.211-70(a) with each piece of equipment sold as a result of the invitation for bid or request for proposal.

(b) As prescribed in 811.107(b), insert the following clause:

SERVICE DATA MANUALS, MECHANICAL EQUIPMENT (JAN 2008)

The contractor agrees to furnish two hard copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(End of clause)

852.211-71 Special notice.

As prescribed in 870.112, insert the following provision:

SPECIAL NOTICE (JAN 2008)

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature that qualifies the offer will require rejection of the offer. However, within 5 days after award of the contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements. The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment being proposed. The notice

of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefore. If the equipment is disapproved by the Government, the contractor will be subject to action under the Default or Termination for Cause provision of this contract. However, prior to default or termination for cause action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of provision)

852.211-72 Technical industry standards.

As prescribed in 811.103-70, insert the following provision:

TECHNICAL INDUSTRY STANDARDS (JAN 2008)

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the []* and []* as to []**. The successful bidder or offeror will be required to submit proof that the item(s) he/she furnishes conforms to this requirement. This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. Proof may also be furnished in the form of a certificate from one of the above listed organizations certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

(End of provision)

*Insert name(s) of organization(s), the standards of which are pertinent to the Government's needs.

**Insert pertinent standards, e.g., fire and casualty, safety and fire protection.

852.211-73 Brand name or equal.

As prescribed in 811.104-71, insert the following clause:

BRAND NAME OR EQUAL (JAN 2008)

(Note: As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in the bid that the bidder is offering an "equal" product, the bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. **CAUTION TO BIDDERS.** The purchasing activity is not responsible for locating or securing any information that is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to:

(i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and

(ii) Establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall:

(i) Include in his/her bid a clear description of such proposed modifications, and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

852.211-74 Liquidated damages.

As prescribed in 811.503 and 836.206, the contracting officer may insert the following clause when appropriate:

LIQUIDATED DAMAGES (JAN 2008)

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of clause)

852.211-75 Product specifications.

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

PRODUCT SPECIFICATIONS (JAN 2008)

The products offered under this solicitation shall be type _____, grade _____, in accordance with [type of specification] No. _____, dated _____ and amendment _____ dated _____, except for paragraphs _____ and _____ which are amended as follows: [List any amendments to the specifications]

(End of clause)

852.214-70 Caution to bidders – bid envelopes.

As provided in 814.201-6(a), the following provision will be included in all invitations for bid:

CAUTION TO BIDDERS – BID ENVELOPES (JAN 2008)

It is the responsibility of each bidder to take all necessary precautions, including the use of proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, use any suitable envelope, identified by the invitation number and bid opening time and date. If an Optional Form (OF) 17, Sealed Bid Label, is furnished with this invitation in lieu of a bid envelope, the bidder is advised to complete and affix the OF 17 to the lower left corner of the envelope used in submitting the bid.

(End of provision)

852.214-71 Restrictions on alternate item(s).

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

RESTRICTIONS ON ALTERNATE ITEM(S) (JAN 2008)

Bids on []* will be considered only if acceptable bids on []** are not received or do not satisfy the total requirement.

(End of provision)

*Contracting officer will insert an alternate item that is considered acceptable.

**Contracting officer will insert the required item and item number.

852.214-72 Alternate item(s).

As prescribed in 814.201-6(b)(2), insert the following provision:

ALTERNATE ITEM(S) (JAN 2008)

Bids on []* will be given equal consideration along with bids on []** and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of [].**

(End of provision)

*Contracting officer will insert an alternate item that is considered acceptable.

**Contracting officer will insert the required item and item number.

852.214-73 Alternate packaging and packing.

As prescribed in 814.201-6(b)(3), insert the following provision:

ALTERNATE PACKAGING AND PACKING (JAN 2008)

The bidders offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of provision)

852.214-74 Bid samples.

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

BID SAMPLES (JAN 2008)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked with the complete lettering/numbering and description of the related bid item(s); the number of the Invitation for Bids; and the name of the bidder submitting the bid sample(s). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all changes pertaining to the preparation and transportation of bid sample(s) must be prepaid by the bidder. Bid sample(s) must be received at the location specified in the solicitation by the time and date for receipt of bids.

(End of provision)

[Deviation per Class Deviation—[Veterans First Contracting Program](#) (VFCP 2016), dated July 25, 2016, revises provisions and clauses at VAAR 852.215-70, 852.219-10 and 852.219-11 to update the web address for the VIP database and to adjust the limitations on subcontracting to comply with Small Business regulations. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

852.215-70 Service-disabled veteran-owned and veteran-owned small business evaluation factors.

As prescribed in 815.304-71(a), insert the following provision:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED
SMALL BUSINESS EVALUATION FACTORS
(JUL 2016) (DEVIATION)

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database (<https://www.vip.vetbiz.gov>).

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (<https://www.vip.vetbiz.gov>).

(End of clause)

852.215-71 Evaluation Factor Commitments.

As prescribed in 815.304-71(b), insert the following clause:

EVALUATION FACTOR COMMITMENTS (DEC 2009)

The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(End of clause)

[Deviation per Class Deviation—816.504, [Indefinite-quantity contracts \(VAIQ 7287642\)](#), dated October 11, 2012, to comply with the FAR requirement that the contract clauses prescribed in VAAR 816.504 supplement the FAR to satisfy the specific needs of the VA. Particularly, this deviation is to **suspend clause 852.216-70, Estimated quantities.**]

852.216-70 [Reserved]

852.216-71 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.

Part 852—Solicitation Provisions and Contract Clauses

(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 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.

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.

(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.

(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

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.

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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.....	4.57%
(The Index Point Change Percentage)	

*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 _____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 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:

¹ 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).

² 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).

³ Provide the information on who publishes the index, such as, in an example for gasoline, "the U.S. Department of Energy."

⁴ 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 (%)⁵ of the price of _____⁶ represents the Base Cost of _____⁷ 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: _____.⁸ 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 _____⁹ and the starting dates of each option year, if not already included in these dates. The

Notes:

⁵ 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.

⁶ 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.

⁷ Enter in this block the commodity applicable to the index being used, as in an example for an ambulance contract, "regular grade gasoline".

⁸ 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.

⁹ Establish time periods for when the Contracting Officer will process adjustments. This could be "the first day of each month" or "the first day of every quarter, January, April, July, and October" or "annually".

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Contracting 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

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)

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
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 the Base Index.....	\$0.340
Divide the increase (or decrease) to the Base Index by the Base Index.....	\$0.34 + \$1.559 = .2181 (21.81% increase)

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.

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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 _____¹⁰ 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:

¹⁰ 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

contact. 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;

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

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

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

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

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

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

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

(End of clause)

852.216-75 Economic Price Adjustment Clause—Fuel Surcharge.

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

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

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

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

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

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

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

Example calculation of fuel price change:	Price \$2.50 Base (+ or -) 15%
	Average National Diesel Fuel
	\$2.88 - \$2.13

3rd QTR (3rd week June) first year	\$3.05 - 2.88 = \$.17 (rounded down to 10 cents) Add one cent per delivered case to each invoice, 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)

852.219-9 VA Small Business Subcontracting Plan Minimum Requirements.

As prescribed in subpart 819.709, insert the following clause:

VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009)

- (a) This clause does not apply to small business concerns.
- (b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.
- (c) For a commercial plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small businesses shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.
- (d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.
- (e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in 819.407.

(End of clause)

[Deviation per Class Deviation—[Veterans First Contracting Program \(VFCP 2016\)](#), dated July 25, 2016, revises provisions and clauses at VAAR 852.215-70, 852.219-10 and 852.219-11 to update the web address for the VIP database and to adjust the limitations on subcontracting to comply with Small Business regulations. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

852.219-10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

As prescribed in 819.7009, insert the following clause:

VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (JUL 2016) (DEVIATION)

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

(1) Means a small business concern:

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans or eligible surviving spouses (see VAAR 802.201 Surviving Spouse definition);

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans (or eligible surviving spouses) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR 74 and is so listed in the Vendor Information Pages database, (<https://www.vip.vetbiz.gov>); and

(v) The business will comply with subcontracting limitations in 13 CFR 125.6, as applicable

(2) “Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(b) General.

(1) Offers are solicited only from verified service-disabled veteran-owned small business concerns. Offers received from concerns that are not verified service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a verified service-disabled veteran-owned small business concern.

(c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, the concern will comply with the limitation on subcontracting requirements in 13 CFR §125.6.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if the joint venture complies with the requirements in 13 CFR 125.15, provided that any reference therein to SDVO SBC is to be construed to apply to a VA verified SDVOSB as appropriate.

(e) Any service-disabled veteran-owned small business concern (non-manufacturer) must meet the requirements in [FAR 19.102\(f\)](#) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

[[Deviation per Class Deviation—Veterans First Contracting Program \(VFCP 2016\)](#), dated July 25, 2016, revises provisions and clauses at VAAR 852.215-70, 852.219-10 and 852.219-11, to update the web address for the VIP database and to adjust the limitations on subcontracting to comply with Small Business regulations. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

852.219-11 VA Notice of Total Veteran-Owned Small Business Set-Aside.

As prescribed in 819.7009, insert the following clause:

**VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE
(JUL 2016) (DEVIATION)**

(a) Definition. For the Department of Veterans Affairs, “Veteran-owned small business or VOSB.”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans;

(ii) The management and daily business operations of which are controlled by one or more veterans;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR 74 and is so listed in the Vendor Information Pages database, (<https://www.vip.vetbiz.gov>): and (v) The business will comply with subcontracting limitations in 13 CFR 125.6, as applicable

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

(b) General.

(1) Offers are solicited only from verified veteran-owned small business concerns. All service-disabled veteran-owned small businesses are also determined to be veteran-owned small businesses if they meet the criteria identified in paragraph (a)(1) of this section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a verified veteran-owned small business concern.

(c) Agreement. A veteran-owned small business concern agrees that in the performance of the contract, the concern will comply with the limitation on subcontracting requirements in 13 CFR §125.6.

(d) A joint venture may be considered a veteran-owned small business concern if the joint venture complies with the requirements in 13 CFR 125.15, provided that any reference therein to SDVO SBC is to be construed to apply to a VA verified SDVOSB and/or VOSB as appropriate..

(e) Any veteran-owned small business concern (non-manufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

852.219-71 VA Mentor-Protégé Program.

As prescribed in 819.7115(a), insert the following clause:

VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)

(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as subcontractors.

(b) The program consists of:

(1) Mentor firms, which are contractors capable of providing developmental assistance;

(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and

(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.

(c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a mentor firm in providing assistance to a protégé firm and apply those costs for purposes of determining whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information.

(End of clause)

852.219-72 Evaluation factor for participation in the VA mentor-protégé program.

As prescribed in 819.7115(b), insert the following clause:

**EVALUATION FACTOR FOR PARTICIPATION IN THE VA MENTOR-PROTÉGÉ PROGRAM
(DEC 2009)**

This solicitation contains an evaluation factor or sub-factor regarding participation in the VA Mentor-Protégé Program. In order to receive credit under the evaluation factor or sub-factor, the offeror must provide with its proposal a copy of a signed letter issued by the VA Office of Small and Disadvantaged Business Utilization approving the offeror's Mentor-Protégé Agreement.

(End of clause)

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

852.219-74 Limitations on Subcontracting—Monitoring and Compliance.

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

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

(a) This solicitation includes

_____ [Fill-in
clause/provision]

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

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(b) Accordingly, any contract resulting from this solicitation is subject to the limitation on subcontracting requirements in 13 CFR 125.6. The Contractor is advised that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) retained by VA to assist in assessing the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirements specified in the clause. To that end, the support contractor(s) may require access to Contractor's offices where the Contractor's business records or other proprietary data are retained and to review such business records regarding the Contractor's compliance with this requirement.

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

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

(End of clause)

852.219-75 Subcontracting Commitments Monitoring and Compliance.

As prescribed in 819.7203(b) insert the following:

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

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

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

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

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

(End of clause)

852.219-76 Subcontracting Plans Monitoring and Compliance.

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

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

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

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

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

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

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

(End of clause)

852.222-70 Contract Work-Hours and Safety Standards Act – nursing home care contract supplement.

As prescribed in 822.305, for nursing home care requirements, insert the following clause:

**CONTRACT WORK HOURS AND SAFETY STANDARD ACT – NURSING HOME CARE
CONTRACT SUPPLEMENT (JAN 2008)**

The following exemption to FAR clause [52.222-4](#), Contract Work Hours and Safety Standards Act—Overtime Compensation, applies to this contract:

A contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), provided:

- (a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;
- (b) There is an agreement or understanding between the contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;
- (c) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

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

(End of clause)

852.228-70 Bond Premium Adjustment.

As prescribed in 828.106-70, insert the following clause:

BOND PREMIUM ADJUSTMENT (JAN 2008)

When net changes in original contract price affect the premium of a Corporate Surety Bond by \$5 or more, the Government, in determining the basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of clause)

852.228-71 Indemnification and Insurance.

As prescribed in 828.306, insert the following clause:

INDEMNIFICATION AND INSURANCE (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

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be deemed acceptable to the Department of Veterans Affairs, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. [*Contracting Officer's Note: In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least \$200,000 per passenger and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.*]

(End of clause)

852.228-72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.

As prescribed in the VAAR at 828.106-71, insert the following clause:

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

Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist protégé firms under VA's Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

(End of clause)

852.228-73 Indemnification of Contractor—Hazardous Research Projects.

As prescribed in 828.7003, insert the following clause:

INDEMNIFICATION OF CONTRACTOR—HAZARDOUS RESEARCH PROJECTS (MAR 2018)

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

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

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

(b) The Government shall indemnify a Contractor for:

(1) Liability (including reasonable expenses of litigation or settlement) to

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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 Sales or use taxes.

As prescribed in 829.302-70, insert the following provision:

SALES OR USE TAXES (JAN 2008)

This provision replaces paragraph (k) of Federal Acquisition Regulation clause 52.212-4, Contract Terms and Conditions—Commercial Items. The articles listed in this solicitation will be purchased from the personal funds of patients and prices submitted herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this solicitation.

(End of clause)

852.229-71 [Reserved]

852.232-72 Electronic submission of payment requests.

As prescribed in 832.7002-2, insert the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2012)

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

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

(2) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

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

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) *Electronic Payment Requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data Transmission.* A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System. (See

Web site at <http://www.fsc.va.gov/einvoice.asp>.)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

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

(e) *Exceptions.* If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of clause)

852.233-70 Protest content/alternative dispute resolution.

As prescribed in 833.106, insert the following provision:

PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008)

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

(1) Include the name, address, fax number, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's

representative and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of provision)

852.233-71 Alternate protest procedure.

As prescribed in 833.106, insert the following provision:

ALTERNATE PROTEST PROCEDURE (JAN 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, or for solicitations issued by the Office of Construction and Facilities Management, the Director, Office of Construction and Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(End of provision)

852.236-70 [Reserved]

852.236-71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (JUL 2002)

The clause entitled "Specifications and Drawings for Construction" in [FAR 52.236-21](#) is supplemented as follows:

- (a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.
- (b) Large scale drawings supersede small scale drawings.
- (c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.
- (d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of clause)

852.236-72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

PERFORMANCE OF WORK BY THE CONTRACTOR (JUL 2002)

The clause entitled "Performance of Work by the Contractor" in [FAR 52.236-1](#) is supplemented as follows:

- (a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by the contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of this clause.
- (b) The contractor shall submit, simultaneously with the schedule of costs required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.
- (c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interest of the

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Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at [52.236-1](#), it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at [52.236-1](#).

(End of clause)

Alternate I (JAN 2008). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

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

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

852.236-73 [Reserved]

852.236-74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

INSPECTION OF CONSTRUCTION (JUL 2002)

The clause entitled "Inspection of Construction" in [FAR 52.246-12](#) is supplemented as follows:

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of clause)

852.236-75 [Reserved]

852.236-76 Correspondence.

As prescribed in 836.570, insert the following clause:

CORRESPONDENCE (APR 1984)

All correspondence relative to this contract shall bear the Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

(End of clause)

852.236-77 Reference to "standards".

As prescribed in 836.571, insert the following clause:

REFERENCE TO "STANDARDS" (JUL 2002)

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in the specifications.

(End of clause)

852.236-78 Government supervision.

As prescribed in 836.572, insert the following clause:

GOVERNMENT SUPERVISION (APR 1984)

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

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

(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may, by written direction, make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of clause)

852.236-79 Daily report of workers and material.

As prescribed in 836.573, insert the following clause:

DAILY REPORT OF WORKERS AND MATERIAL (APR 1984)

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work that they perform, such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of clause)

852.236-80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

SUBCONTRACTS AND WORK COORDINATION (APR 1984)

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

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

(c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between

subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of clause)

Alternate I (JUL 2002). For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed

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in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

852.236-81 [Reserved]

852.236-82 Payments under fixed-price construction contracts (without NAS).

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)."

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1984)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in [FAR 52.232-5](#) is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is

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to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

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

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the sub-branches, as applied to each branch, shall equal the total cost of such branch. The total cost of all branches shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed in the table in this paragraph (b)(5). The percentages listed below are proportions of the cost listed in the contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM	
System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of clause)

Alternate I (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program that shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The

guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236-83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled "Network Analysis System (NAS)."

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JUL 2002)

The clause entitled "Payments Under Fixed-Price Construction Contracts" in [FAR 52.232-5](#) is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

(i) Where the performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section Network Analysis System (NAS), or to process the Interim Arrow Diagram/Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government

contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

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

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this section. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM	
System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of clause)

Alternate I (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CMP cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and

what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236-84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

SCHEDULE OF WORK PROGRESS (NOV 1984)

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of clause)

852.236-85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

SUPPLEMENTARY LABOR STANDARDS PROVISIONS (APR 1984)

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of clause)

852.236-86 Workers' compensation.

As prescribed in 836.577, insert the following clause:

WORKERS' COMPENSATION (JAN 2008)

Public Law 107-217 (40 U.S.C. 3172) authorizes the constituted authority of States to apply their workers compensation laws to all lands and premises owned or held by the United States.

(End of clause)

852.236-87 Accident prevention.

As prescribed in 836.513, insert the following clause:

ACCIDENT PREVENTION (SEP 1993)

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the

Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with [FAR 52.236-13](#), Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of clause)

852.236-88 Contract changes – supplement.

As prescribed in 836.578, insert the following clause:

CONTRACT CHANGES – SUPPLEMENT (JUL 2002)

The clauses entitled "Changes" in [FAR 52.243-4](#) and "Differing Site Conditions" in [FAR 52.236-2](#) are supplemented as follows:

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over \$500,000.

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under [FAR Subpart 15.403](#), the cost or pricing data shall be submitted in accordance with [FAR 15.403-5](#).

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal, which includes the information required by paragraph (a)(1), for cost of changes in work within 30 calendar days.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (a)(1) or (a)(2) of this clause is not received within 30 calendar days or if agreement has not been reached.

(4) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing \$500,000 or less:

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data or information other than cost or pricing data are required under [FAR 15.403](#), the data shall be submitted in accordance with [FAR 15.403-5](#). No itemized breakdown will be required for proposals amounting to less than \$1,000.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit within 30 calendar days, a proposal that includes the information required by paragraph (b)(1) for the cost of the changes in work.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (b)(1) or (b)(2) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(4) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7-1/2 percent overhead and 7-1/2 percent profit on the next \$30,000; 5 percent overhead and 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

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(5) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first \$20,000; 7-1/2 percent fee on the next \$30,000; and 5 percent fee on balance over \$50,000.

(6) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(7) Where the contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

(8) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(9) Cost of Federal Old Age Benefit (Social Security) tax and of Worker's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractors' proposals.

(10) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefore. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the contractor's overhead and/or fee percentage.

(11) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of clause)

852.236-89 Buy American Act.

As prescribed in Table 825.1102, insert the following clause:

BUY AMERICAN ACT (JAN 2008)

(a) Reference is made to the clause entitled "Buy American Act – Construction Materials," [FAR 52.225-9](#).

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to [FAR 52.225-9](#), VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) it was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with Subpart 825.2 and [FAR 25.2](#).

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of clause)

Alternate I (JAN 2008). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act – Construction Materials under Trade Agreements," [FAR 52.225-11](#).

(b) The restrictions contained in this clause 852.236-89 are waived for designated country construction material as defined in [FAR 52.225-11](#). Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to [FAR 52.225-11](#), VA does not anticipate accepting an offer that includes foreign construction material, other than designated country construction material.

Alternate II (JAN 2008). As prescribed in Table 825.1102, substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act – Construction Materials under Trade Agreements," [FAR 52.225-11](#) and its Alternate I.

(b) The restrictions contained in this clause 852.236-89 are waived for World Trade Organization (WTO) Government Procurement Agreement (GPA) country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, as defined in [FAR 52.225-11](#) and its Alternate I. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to [FAR 52.225-11](#), VA does not anticipate accepting an offer that includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

852.236-90 Restriction on submission and use of equal products.

As prescribed in 836.202(c), the following clause shall be included in the solicitation if it is determined that only one product will meet the Government's minimum needs and the Department of Veterans Affairs will not allow the submission of "equal" products:

RESTRICTION ON SUBMISSION AND USE OF EQUAL PRODUCTS (NOV 1986)

The clause applies to the following items:

Notwithstanding the "Material and Workmanship" clause of this contract, [FAR 52.236-5\(a\)](#), nor any other contractual provision, "equal" products will not be considered by the Department of Veterans Affairs and may not be used.

(End of clause)

852.236-91 Special notes.

As prescribed in 836.579, insert the following clause:

SPECIAL NOTES (JUL 2002)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration, or repair of buildings, structures, and communications facilities, or other engineering projects including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted, the same standard workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their intended use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10-year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe weather in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of clause)

852.237-7 Indemnification and medical liability insurance.

As prescribed in 837.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 2008)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) [37.101](#), under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [Contracting Officer's Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.] However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the

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health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of clause)

852.237-70 Contractor responsibilities.

As prescribed in 837.110, insert the following clause:

CONTRACTOR RESPONSIBILITIES (APR 1984)

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of []. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting there from.

(End of clause)

852.246-70 Guarantee.

As prescribed in 846.302-70, insert the following clause:

GUARANTEE (JAN 2008)

The contractor guarantees the equipment against defective material, workmanship and performance for a period of []¹, said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period.

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Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.²

(End of clause)

¹ Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

² The above clause will be modified to conform to standards of the industry involved.

852.246-71 Inspection.

As prescribed in 846.302-71(a), insert the following clause:

INSPECTION (JAN 2008)

Rejected goods will be held subject to contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the contractor's account.

(End of clause)

Alternate I (JAN 2008). As provided in 846.302-71(b), insert the following clause:

INSPECTION (JAN 2008)

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of clause)

852.246-72 Frozen processed foods.

As prescribed in 846.302-72, insert the following clause:

FROZEN PROCESSED FOODS (JAN 2008)

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The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of clause)

852.246-73 Noncompliance with packaging, packing, and/or marking requirements.

As prescribed in 846.302-73, insert the following clause:

**NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS
(JAN 2008)**

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of clause)

852.246-74 Special warranties.

As prescribed in 846.710-70, insert the following clause:

SPECIAL WARRANTIES (JAN 2008)

The clause entitled "Warranty of Construction" in [FAR 52.246-21](#) is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at [52.246-21](#), Warranty of Construction, unless otherwise provided for in such special warranties.

(End of clause)

852.246-75 Warranty for construction – guarantee period services.

As prescribed in 846.710-71, insert the following clause:

WARRANTY FOR CONSTRUCTION – GUARANTEE PERIOD SERVICES (JAN 2008)

The clause entitled “Warranty of Construction” in [FAR 52.246-21](#) is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at [FAR 52.249-10](#), Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor’s refusal or failure to complete the work within this specified time, whether or not the contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

852.247-70 Determining transportation costs for bid evaluation.

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

DETERMINING TRANSPORTATION COSTS FOR BID EVALUATION (APR 1984)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

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

(End of provision)

852.252-70 Solicitation provisions or clauses incorporated by reference.

As prescribed in 852.102(a), insert the following provision:

SOLICITATION PROVISIONS OR CLAUSES INCORPORATED BY REFERENCE (JAN 2008)

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the web sites provided in the provision at [FAR 52.252-1](#), Solicitation Provisions Incorporated by Reference, or the clause at FAR 52.252-2, Clauses Incorporated by Reference. Copies may also be obtained from the contracting officer.

[Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer.]

(End of provision)

852.270-1 Representatives of contracting officers.

As prescribed in 801.603-70(d), insert the following provision:

REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally monitor the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation shall be furnished to the contractor.

(End of provision)

852.270-2 Bread and bakery products - quantities.

As prescribed in 870.111-3, insert the following clause:

BREAD AND BAKERY PRODUCTS – QUANTITIES (JAN 2008)

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Department of Veterans Affairs.

(End of clause)

852.270-3 Purchase of shellfish.

As prescribed in 870.111-3, insert the following clause:

PURCHASE OF SHELLFISH (APR 1984)

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

852.271-70 Nondiscrimination in services provided to beneficiaries.

As prescribed in 837.110-70 and 871.212, insert the following provision:

NONDISCRIMINATION IN SERVICES PROVIDED TO BENEFICIARIES (JAN 2008)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Department of Veterans Affairs, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of provision)

852.271-71 [Reserved]

852.271-72 Time spent by counselee in counseling process.

As prescribed in 871.212, insert the following clause:

TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (APR 1984)

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of clause)

852.271-73 Use and publication of counseling results.

As prescribed in 871.212, insert the following clause:

USE AND PUBLICATION OF COUNSELING RESULTS (JAN 2008)

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of clause)

852.271-74 Inspection.

As prescribed in 871.212, insert the following clause:

INSPECTION (JAN 2008)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and examine the training facilities, the work of the veterans in training under this contract, and the records of these operations.

(End of clause)

852.271-75 Extension of contract period.

As prescribed in 871.212, insert the following clause:

EXTENSION OF CONTRACT PERIOD (APR 1984)

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of clause)

852.273-70 Late offers.

As prescribed in 873.110(a), insert the following provision:

LATE OFFERS (JAN 2003)

This provision replaces paragraph (f) of FAR provision [52.212-1](#). Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

852.273-71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

ALTERNATIVE NEGOTIATION TECHNIQUES (JAN 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

852.273-72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

ALTERNATIVE EVALUATION (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to

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the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by [Contracting officer insert description of how the information may be viewed electronically or otherwise]. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

852.273-73 Evaluation – health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision [52.212-2](#), the contracting officer may insert a provision substantially as follows:

EVALUATION – HEALTH-CARE RESOURCES (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:

[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful

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offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

852.273-74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

AWARD WITHOUT EXCHANGES (JAN 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

853.000 Scope of part.

This part prescribes VA forms for use in the acquisition of goods and services. It only identifies forms that are used between VA and its contractors or the general public. It does not identify forms for uses internal to VA or between VA and another Federal agency.

SUBPART 853.1 – GENERAL**853.107 Obtaining forms.**

The VA forms may be obtained from any VA contracting office or by requesting such forms from the Deputy Assistant Secretary for Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUBPART 853.2 – PRESCRIPTION OF FORMS**853.201 Federal acquisition system.****853.201-1 Contracting authority and responsibilities (SF 1402).**

Standard Form (SF) 1402, Certificate of Appointment, is used in accordance with [FAR 1.603-3](#), Appointment, to appoint VA contracting officers under VA's Contracting Officer Certification Program (see 801.690-6).

853.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services:

(a) VA Forms 90-2138, Order for Supplies or Services, or 90-2138-ADP, Purchase Order for Supplies or Service, shall be used as indicated in 813.307. They may be used in lieu of OF 347, Order of Supplies and Services, or Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

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

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

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

(c) VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

[Deviation per Class Deviation— VAAR 813.307, Forms, and VAAR 853.213, Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348, dated March 31, 2017, as amended March 31, 2018 and July 27, 2018, increases the dollar threshold not to exceed the Simplified Acquisition Threshold for use of VA Form 10-2421, Prosthetics Authorization for Items or Services. This deviation expires July 31, 2019, unless otherwise rescinded.]

(d) VA Form 10-2421, Prosthetics Authorization and Items and Services, will be used as prescribed in 813.307.

853.215 Contracting by negotiation.

853.215-70 VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.

VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA, will be used for establishing contract nursing home care for VA beneficiaries.

853.236 Construction and architect-engineer contracts.

853.236-70 VA Form 10-6298, Architect-Engineer Fee Proposal.

VA Form 10-6298, Architect-Engineer Fee Proposal, shall be used as prescribed in 836.606-71.

853.271 Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.

853.271-1 Loan Guaranty Program (VA Forms 26-6724 and 26-1839).

(a) VA Form 26-6724, Invitation, Bid, and/or Acceptance or Authorization, will be used in obtaining services specified in Subpart 871.1.

(b) VA Form 26-1839, Compliance Inspection Report, will be used for inspection of repairs for properties under the Loan Guaranty Program as specified in 846.472.