



# VA Acquisition Regulation Update

October 19, 2021

Number 2008-31

1. **Material Transmitted:** The attached pages contain revisions to the Department of Veterans Affairs Acquisition Regulation (VAAR) part 819, Small Business Programs, and 852, Solicitation Provisions and Contract Clauses.

2. **Summary of Changes:** This VAAR update implements requirements of Pub.L. 116-183 to amend 38 U.S.C. 8127. It adds: 1) language at 819.7001 regarding responsibilities and the requirement for certifications; 2) compliance with limitations on subcontracting (LOS) requirements for eligibility at 819.7003; 3) prescriptions for two new VAAR classes at 819.7009; and, 4) the two new clauses at 852.219-77 and 852.219-78.

a. Text revisions are listed and summarized below:

VAAR Part/Subpart	Title	Change Summary
819.7001(e) through (g)	General	Adds language regarding VA monitoring responsibilities, compliance, and penalties regarding the SDVOSB/VOSB LOS certification requirements.

<b>VAAR Part/Subpart</b>	<b>Title</b>	<b>Change Summary</b>
819.7003	Eligibility	Adds language that contracting officer must obtain the LOS certification from the offeror before awarding a contract.
819.7009(b) and (c)	Contract Clauses.	Adds prescriptions for two new clauses at 852.219-77 and 852.219-78.
852.219-77	VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.	Adds new clause.
852.219-78	VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.	Adds new clause.

**3. Filing Instructions:**

<b>Remove pages:</b>	<b>Insert Pages:</b>
819-1 thru 819-30	819-1 thru 819-32
852-1 thru 852-88	852-1 thru 852-94

**Effective date:** September 15, 2021.

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS****PART 819—SMALL BUSINESS PROGRAMS****Sec.**

819.102            Size Standards

**Subpart 819.2--Policies**

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

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

819.302            Protesting a small business representation or rerepresentation.  
 819.307            SDVOSB/VOSB Small Business Status Protests.

**Subpart 819.5 – Set-Asides for Small Business**

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

**Subpart 819.6 – Certificates of Competency and Determinations of Responsibility**

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

**Subpart 819.7 – The Small Business Subcontracting Program**

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

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

819.800 General.

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

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

**Subpart 819.71 – VA Mentor-Protégé Program**

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

**Subpart 819.72—VA Subcontracting Compliance Review Program**

819.7200 General  
 819.7201 Scope of subcontracting compliance reviews.  
 819.7202 Types of subcontracting compliance reviews.  
 819.7203 Contract clauses.

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

**PART 819—SMALL BUSINESS PROGRAMS****SUBPART 819.1— SIZE STANDARDS**

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

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

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

**SUBPART 819.2 – POLICIES**

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

**819.201 General policy.**

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

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

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

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

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

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

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

### **819.202 Specific policies.**

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

**819.202-1 Encouraging small business participation in acquisitions.**

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

**819.202-5 Data collection and reporting requirements.**

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

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

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

(d) As an addendum to the report, each acquisition activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category.

(e) Upon review by OSDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goals submitted. Based on documents submitted, OSDBU will make a final determination on the goal assignment.

(f) Accomplishment of goals will be determined by OSDBU from data reported by acquisition activities into the Federal Procurement Data System-Next Generation (FPDS-NG).

**819.202-70 HCA responsibilities.**

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

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

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

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

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

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

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

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

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

**819.202-71 Additional contracting officer responsibilities.**

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

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

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

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

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



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

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

**819.202-72 [Reserved]**

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

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

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

(b) When using a contracting preference under [FAR part 19](#) (for example, a women-owned small business set-aside), contracting officers shall give priority to small business concerns verified as owned and controlled by Veterans pursuant to subpart [819.70](#), if such business concern(s) also meet the requirements of that contracting preference. Contracting officers shall include the provision and clause prescribed at [815.304-71](#) in solicitations.

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

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

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

**819.302 Protesting a small business representation or rerepresentation.**

(e)(2) The documents are to be furnished to the concern whose representation is being protested by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

**819.307 SDVOSB/VOSB Small Business Status Protests.**

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

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

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

(d) The Director, CVE, will notify the protester and the contracting officer of the date the status protest was received by CVE and whether the status protest will be

processed or dismissed for lack of timeliness or specificity.

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

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

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

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

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

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

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

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

[78 FR 59865, Sept. 30, 2013]

### **SUBPART 819.5 – SET-ASIDES FOR SMALL BUSINESS**

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

#### **819.501-70 General principles for setting aside VA acquisitions.**

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

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

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

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below the SAT for small business.

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

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

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

(c) Any reference to small business preferences/set-asides in [FAR subpart 19.5](#) is to be construed to include verified SDVOSBs and VOSBs, unless it clearly conflicts with this subpart.

**819.502 Setting aside acquisitions.****819.502-2 Total small business set asides.**

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

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

(2) Notice of total small business set-aside, page \_\_\_\_\_, applies to items \_\_\_\_\_ through \_\_\_\_\_ in this solicitation.

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

**819.502-3 Partial set-asides.**

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

Notice of partial set-aside, page \_\_\_\_\_, applies to item \_\_\_\_\_ through item \_\_\_\_\_ in this solicitation.

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

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

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

### **SUBPART 819.6 – CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY**

#### **819.602 Procedures.**

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

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

### **SUBPART 819.7 – THE SMALL BUSINESS SUBCONTRACTING PROGRAM**

#### **819.704 Subcontracting plan requirements.**

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

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

(c) VA’s OSDDBU shall review all prime contractor’s subcontracting plan

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achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) of this section, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in [804.1102](#).

**819.705 Appeal of Contracting Officer decisions.**

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

(b) When an interested party intends to appeal a contracting officer's decision to not use the set-aside authority contained in subpart [819.70](#), the party shall notify the contracting officer, in writing, of its intent to challenge the decision. The contracting officer has 5 working days to reply to the challenge by either revising the strategy or indicating the rationale for not setting aside the requirement. Upon receipt of the decision, the interested party may appeal to the Head of the Contracting Activity (HCA). Such appeal shall be filed within 5 working days of receipt of the contracting officer's decision. The HCA has 5 working days to respond to the appeal. The contracting officer shall suspend action on the acquisition unless the HCA makes a written determination that urgent circumstances exist which would significantly affect the interests of the government. The decision of the HCA shall be final.

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

**819.709 Contract clause.**

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

**SUBPART 819.8 – CONTRACTING WITH THE SMALL BUSINESS  
ADMINISTRATION (THE 8(A) PROGRAM)**

**819.800 General.**

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of VA are appropriate for

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inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, OSDBU (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the VA contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to VA, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between VA and SBA and will be administered by VA.

**SUBPART 819.70 – SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS ACQUISITION PROGRAM**

[Deviation per [Class Deviation](#)—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises VAAR subpart 819.70 in its entirety to fully implement the Veterans First Contracting Program to comply with 38 U.S.C. 8127 and 8128 and the U.S. Supreme Court decision. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per [Class Deviation](#) from VA Acquisition Regulation Part 819—Small Business Programs and Part 852-Solicitation Provisions and Contract Clauses, dated July 12, 2019 revises VAAR subparts 819.7001(a) and (b), 819.7003(a), and (c) through (g), and 819.7009. The class deviation effectively updates the language set forth in Class Deviation—Veterans First Contracting Programs (VFCP 2016), Attachment 9—VAAR Part 819, Small Business Programs, and Attachment 10—VAAR Part 852, Solicitation Provisions and Contract Clauses, dated July 25, 2016. The remaining text in Attachments 9 and 10 in Class Deviation VFCP 2016, continues to be in effect. The class deviation incorporates the Small Business Administration’s regulatory and legislative changes and clarifies the applicability of limitations on subcontracting and nonmanufacturer requirements to contracts awarded under the VFCP. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per VA Acquisition Regulation (VAAR) [Class Deviation](#) to Implement Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) Certification Requirements—VAAR Part 819 and Part 852, dated September 15, 2021. The class deviation implements the requirements of P.L. 116-183, Protecting Business Opportunities for Veterans Act of 2019 to amend 38 U.S.C. 8127. The class deviation adds: 1) language at 819.7001 regarding responsibilities and the requirement for certifications; 2) compliance with limitations on subcontracting requirements for eligibility at 819.7003; 3) prescriptions for two new VAAR classes at 819.7009; and, 4) the two new clauses at 852.219-77 and 852.219-



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78. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

**819.7001 General.**

(a) Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, as amended (38 U.S.C. 8127-8128), authorize a VA specific acquisition program to increase contracting opportunities for eligible small business concerns owned and controlled by Veterans with service connected disabilities and small business concerns owned and controlled by Veterans. These businesses are also referred to as service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs). SDVOSBs/VOSBs must have their ownership and control verified by VA and be listed in the Vendor Information Pages (VIP) at the time of submission of offers/quotes, and prior to award of any contracts.

(b) The program as implemented in this subpart shall be known as the Veterans First Contracting Program (VFCP). The purpose of the program is to provide contracting assistance to SDVOSBs/VOSBs so they can fully participate in the VA contracting process. Eligible SDVOSBs qualify for VOSB preferences under this subpart.

(c) 38 U.S.C. 8127 (b), (c) and (d) provide the authority for VA contracting officers to make awards to verified SDVOSBs/VOSBs using set-asides, as well as other than full and open competition (sole source), when certain conditions are met.

(d) Contracting officers shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans (see [819.7005](#) and [819.7006](#)), to the maximum extent practicable. The contracting officer may also use other SDVOSB/VOSB preferences in this subpart as appropriate.

(e) The Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), pursuant to Pub. L. 116-183, will monitor compliance with the requirement in 38 U.S.C. 8127(k) (see [819.7003\(f\)](#)) for the contracting officer to obtain a certification from an SDVOSB/VOSB concern that the offeror will comply with the limitations on subcontracting certification requirements at [819.7009\(b\) and \(c\)](#) as provided in the solicitation and resulting contract. The OSBUDU and CAO shall refer any violations or suspected violations to the VA Office of Inspector General.

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

- (1) Referral to the VA Suspension and Debarment Committee;

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(2) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(3) Prosecution for violating section 1001 of title 18.

(g) Pursuant to Pub. L. 116-183, the Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.]

**819.7002 Applicability.**

This subpart applies to VA contracting activities and to all contracts (see [FAR 2.101](#), Definitions), including BPAs and orders, under [FAR subpart 8.4](#) and [FAR part 12](#) that are not otherwise excluded by law. In addition, this subpart applies to any government entity that has a contract, agreement, or other arrangement with the VA to acquire goods and services on behalf of the VA in accordance with [817.502](#).

**819.7003 Eligibility.**

(a) SDVOSB/VOSB size eligibility, status challenges, and appeals, are governed by SBA regulations at 13 CFR parts 121, 125 and 134, except where expressly directed otherwise by this part, or 38 CFR part 74 – Veterans Small Business Regulations.

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

(1) SDVOSB or VOSB eligible under this subpart;

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

(3) SDVOSB/VOSB listed as verified in VIP database at:  
<https://www.vip.vetbiz.va.gov>.

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 125 and is listed as verified in the VIP database (see 38 CFR 74.5(b)).

(1) At least one member of the joint venture is a verified SDVOSB or VOSB and makes the representations in paragraph (b) of this section;

(2) Except for a large firm participating in a mentor-protégé agreement approved by SBA under 13 CFR 125.9(d)(1), each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

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(3) The joint venture meets the requirements of 13 CFR 125.18 (b), modified to include VIP verified VOSBs where this CFR section refers to a service-disabled Veteran-owned small business concern (SDVO SBC).

(4) The joint venture is listed as verified in the VIP database.

(d) To receive a benefit under the Veterans First Contacting Program (VFCP), an otherwise eligible SDVOSB/VOSB must meet Small Business Administration (SBA) regulations requirements for small business size and government contracting programs at 13 CFR part 121 and part 125, including the nonmanufacturer requirements at 13 CFR 121.406(b).

(e) A contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that only VIP-listed SDVOSBs are considered eligible and/or “similarly situated” under an SDVOSB sole source or set-aside. In addition, a VOSB is subject to the same limitations on subcontracting that apply to an SDVOSB, and only VIP-listed Veteran-owned small businesses are considered eligible and/or “similarly situated” under a VOSB sole source or set-aside. The nonmanufacturer rule (see 13 CFR 121.406) and the limitations on subcontracting requirements apply to all SDVOSB and VOSB set-aside and sole source contracts.

(f) Pursuant to the authority of 38 U.S.C. 8127(k)(2), a contracting officer may award a contract under 38 U.S.C. 8127 only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see [819.7009](#)). The formal certification must be completed, signed, and returned with the offeror’s bid, quotation, or proposal. The Government will not consider offers from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

(g) In some instances, SDVOSB eligibility may be extended to businesses owned and operated by surviving spouses, as set forth in [802.101](#).

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

**819.7004 Contracting order of priority.**

In determining the acquisition strategy applicable to a procurement requirement the contracting officer shall consider, in the following order of priority, contracting preferences prescribed in this part for awarding VA contracts to:

(a) Eligible small business concerns owned and controlled by service-disabled Veterans;

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(b) Eligible small business concerns owned and controlled by Veterans that are not covered by paragraph (a);

(c) Small business concerns using priorities and preferences in [819.203-70](#) and this subpart.

**819.7005 VA service-disabled Veteran-owned small business set-aside procedures.**

(a) The contracting officer shall consider SDVOSB set-asides, before considering VOSB set-asides. Except as authorized by [813.106](#), [819.7007](#) and [819.7008](#), the contracting officer shall set-aside an acquisition for competition restricted to verified SDVOSB concerns upon a reasonable expectation based on market research that:

(1) Offers/quotes will be received from two or more eligible SDVOSB; and

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

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

(1) Businesses are registered and verified as eligible in the VIP database at the time of submission of offers/quotes, and prior to making an award; and

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

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

**819.7006 VA Veteran-owned small business set-aside procedures.**

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by [813.106](#), [819.7007](#) and [819.7008](#), the contracting officer shall set aside an acquisition for competition restricted to SDVOSBs or VOSBs upon a reasonable expectation, based on market research, that:

(1) Offers/quotes will be received from two or more eligible SDVOSBs or

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## VOSBs; and

(2) Award can be made at a fair and reasonable price.

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

(1) Businesses are listed as verified in the VIP database at the time of submission of offers/quotes and prior to making an award; and

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

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from a verified SDVOSB/VOSB in response to a SDVOSB or VOSB set-aside, the contracting officer should make an award to that SDVOSB or VOSB. If the contracting officer receives no acceptable offers/quotes from verified SDVOSBs or VOSBs, the SDVOSB or VOSB set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs or otherwise procured using the most appropriate strategy based on the results of market research.

**819.7007 Sole source awards to a verified service-disabled Veteran-owned small business.**

(a) A contracting officer may award a contract to a verified SDVOSB concern using procedures other than competitive procedures provided—

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

(2) The justification prepared pursuant to [FAR 6.302-5\(c\)\(2\)\(ii\)](#) is posted in accordance with [FAR subpart 5.301\(d\)](#);

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

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

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

(c) A determination that only one SDVOSB can meet the requirement is not

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required. However, in accordance with [FAR 6.302-5\(c\)\(2\)\(ii\)](#), contracts awarded using this authority shall be supported by a written justification and approval described in [FAR 6.303](#) and [6.304](#), as applicable.

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

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

**819.7008 Sole source awards to a verified Veteran-owned small business.**

(a) A contracting officers may award a contract to a verified VOSB concern using procedures other than competitive procedures provided—

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

(2) The justification prepared pursuant to [FAR 6.302-5\(c\)\(2\)\(ii\)](#) is posted in accordance with [FAR 5.301\(d\)](#);

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

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

(5) No responsible SDVOSB concern has been identified.

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

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

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

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

**819.7009 Contract clauses.**

(a) The contracting officer shall insert clause [852.219-10](#), VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, or clause [852.219-11](#), VA Notice of Total Veteran-Owned Small Business Set-Aside, as applicable, in solicitations and contracts, including BPAs and orders, for acquisitions that are evaluated, set-aside or awarded on a sole source basis under this subpart. This includes multiple-award contracts when orders may be set aside for service-disabled Veteran-owned small business concerns as described in [FAR 8.405-5](#) and [FAR 16.505\(b\)\(2\)\(i\)\(F\)](#).

(b) The contracting officer shall insert the clause at [852.219-77](#), VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, in solicitations and contracts for services and construction, including BPAs and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs.

(c) The contracting officer shall insert the clause at [852.219-78](#), VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products, in solicitations and contracts for supplies or products, including BPAs and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs. The contracting officer shall appropriately tailor the clause as set forth in paragraph (a)(2)(iii).

**SUBPART 819.71 – VA MENTOR-PROTÉGÉ PROGRAM****819.7101 Purpose.**

The VA Mentor-Protégé Program is designed to assist service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs) in enhancing their capabilities to perform contracts and subcontracts for VA. The Mentor-Protégé Program is also designed to improve the performance of VA contractors and subcontractors by providing developmental assistance to protégé entities, fostering the establishment of long-term business relationships between SDVOSBs, VOSBs and prime contractors, and increasing the overall number of SDVOSBs and VOSBs that receive VA contract and subcontract awards. A firm's status as a protégé under a VA contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts.

**819.7102 Definitions.**

(a) A *Mentor* is a contractor that elects to promote and develop SDVOSBs and/or VOSBs by providing developmental assistance designed to enhance the

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business success of the protégé. A mentor may be a large or small business concern.

(b) *OSDBU* is the Office of Small and Disadvantaged Business Utilization. This is the VA office responsible for administering, implementing and coordinating the Department's small business programs, including the Mentor-Protégé Program.

(c) *Program* refers to the VA Mentor-Protégé Program as described in this Subpart.

(d) *Protégé* means a SDVOSB or VOSB, as defined in [802.101](#), which meets federal small business size standards in its primary NAICS code and which is the recipient of developmental assistance pursuant to a Mentor- Protégé agreement.



**819.7103 Non-affiliation.**

A Protégé firm will not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance from the mentor firm under VA's Mentor-Protégé Program. The determination of affiliation is a function of the SBA.

**819.7104 General policy.**

(a) To be eligible, mentors and protégés must not be listed on the Excluded Parties List System, located at <http://www.epls.gov>. Mentors will provide appropriate developmental assistance to enhance the capabilities of protégés to perform as prime contractors and/or subcontractors.

(b) VA reserves the right to limit the number of participants in the program in order to ensure its effective management of the Mentor-Protégé Program.

**819.7105 Incentives for prime contractor participation.**

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(e), VA is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. [FAR 19.202-1](#) provides additional guidance.

(b) Costs incurred by a mentor to provide developmental assistance, as described in [819.7110](#) to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a VA contract. If VA is the mentor's responsible audit agency under [FAR 42.703-1](#), VA will consider these costs in determining indirect cost rates. If VA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to subparagraph (b) of this section, contracting officers shall give mentors evaluation credit under 852.219-52, Evaluation Factor for Participation in the VA Mentor-Protégé Program, considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing mentor-protégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in

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evaluating past performance under [FAR 15.305\(a\)\(2\)\(v\)](#) and determining contractor responsibility [19.705-5\(a\)\(1\)](#).

(d) OSDBU Mentoring Award. A nonmonetary award will be presented annually to the mentoring firm providing the most effective developmental support to a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the OSDBU Director.

(e) OSDBU Mentor-Protégé Annual Conference. At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on program progress.

**819.7106 Eligibility of Mentor and Protégé firms.**

Eligible business entities approved as mentors may enter into agreements (hereafter referred to as “Mentor-Protégé Agreement” or “Agreement” and explained in [819.7108](#)) with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as mentors. Protégés may participate in the program in pursuit of a prime contractor as subcontractors under the mentor’s prime contract with VA, but are not required to be a subcontractor to a VA prime contractor or be a VA prime contractor.

(a) Eligibility. A Mentor:

(1) May be either a large or small business entity and either a prime contractor or subcontractor;

(2) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and

(3) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) Eligibility. A Protégé:

(1) Must be a SDVOSB or VOSB as defined in [802.101](#);

(2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

(c) Protégés may have multiple mentors. Protégés participating in mentor- protégé programs in addition to VA’s Program should maintain a system for preparing separate

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reports of mentoring activity so that results of VA's Program can be reported separately from any other agency program.

A protégé firm shall self-represent to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the VetBiz.gov VIP database. Protégés must maintain verified status throughout the term of the Mentor-Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

**819.7107 Selection of Protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of SDVOSB or VOSB firms whose core competencies support VA's mission; and choose SDVOSB and/or VOSB protégés in addition to firms with whom they have established business relationships.

(b) Mentors may have multiple protégés. However, to preserve the integrity of the Program and assure the quality of developmental assistance provided to protégés, VA reserves the right to limit the total number of protégés participating under each mentor firm for the Mentor-Protégé Program.

(c) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with the FAR and SBA regulations.

**819.7108 Application process.**

(a) Firms interested in becoming approved mentor-protégé participants must submit a joint written VA Mentor-Protégé Agreement to the VA OSDBU for review and approval. The proposed Mentor-Protégé Agreement will be evaluated on the extent to which the mentor plans to provide developmental assistance. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support.

(b) The Mentor-Protégé Agreement must contain:

(1) Names, addresses, phone numbers, and e-mail addresses (if available) of the mentor and protégé firm(s) and a point of contact for both mentor and protégé who will oversee the agreement;

(2) A statement from the protégé firm that the firm is currently eligible as a SDVOSB or VOSB to participate in VA's Mentor-Protégé Program;

(3) A description of the mentor's ability to provide developmental assistance to the protégé and the type of developmental assistance that will be provided, to include a description of the types and dollar amounts of subcontract work, if any, that may be

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awarded to the protégé firm;

(4) Duration of the Agreement, including rights and responsibilities of both parties (mentor and protégé), with bi-annual reviews;

(5) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the mentor or the protégé to notify the other firm and VA OSDBU in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(6) A schedule with milestones for providing assistance;

(7) Criteria for evaluation of the protégé's developmental success;

(8) A plan addressing how the mentor will increase the quality of the protégé firm's technical capabilities and contracting and subcontracting opportunities;

(9) An estimate of the total cost of the planned mentoring assistance to be provided to the Protégé;

(10) An agreement by both parties to comply with the reporting requirements of [819.7113](#);

(11) A plan for accomplishing unfinished work should the Agreement be voluntarily cancelled;

(12) Other terms and conditions, as appropriate; and

(13) Signatures and date(s).

(c) The Agreement defines the relationship between the mentor and the protégé firms only. The Agreement does not create any privity of contract between the mentor and VA or the protégé and VA.

**819.7109 VA review of application.**

(a) VA OSDBU will review the information to establish the mentor and protégé eligibility and to ensure that the information that is in VAAR [819.7108](#) is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDBU completes its review and provides written approval, the mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will post a copy of the Mentor-Protégé Agreements to a

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VA Web site to be accessible to VA contracting officers for review for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDBU will notify the mentor and protégé and request correction of deficiencies to be provided within 15 days.

**819.7110 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include, but are not limited to, the following:

- (a) Guidance relating to—
  - (1) Financial management;
  - (2) Organizational management;
  - (3) Overall business management/planning;
  - (4) Business development; and
  - (5) Technical assistance.
- (b) Loans.
- (c) Rent-free use of facilities and/or equipment.
- (d) Property.
- (e) Temporary assignment of personnel to a Protégé for training.
- (f) Any other types of permissible, mutually beneficial assistance.

**819.7111 Obligations under the Mentor-Protégé Program.**

(a) A mentor or protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract with VA.

(b) Mentors and protégés shall submit reports to VA OSDBU in accordance with 819.7113.

**819.7112 Internal Control.**

(a) OSDBU will oversee the Program and will work cooperatively with relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances applicable to the Program. These controls will include:

(1) Reviewing and evaluating mentor applications for validity of the provided information;

(2) Reviewing bi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the plan submitted in the approved Agreement;

(3) Reviewing and evaluating financial reports and invoices submitted by the mentor to verify that VA is not charged by the mentor for providing developmental assistance to the protégé; and

(4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to insure the effective management of the Program.

(b) VA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in VA's best interest. The rescission shall be in writing and sent to the mentor and protégé after approval by the OSDBU Director. Rescission of an Agreement does not change the terms of any subcontract between the mentor and the protégé.

**819.7113 Reports.**

(a) Mentor and protégé entities shall submit to VA's OSDBU bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

(1) Specific actions taken by the mentor during the evaluation period to increase the participation of their protégé(s) as suppliers to VA, other government agencies and to commercial entities;

(2) Specific actions taken by the mentor during the evaluation period to develop technical and administrative expertise of a protégé as defined in the Agreement;

(3) The extent to which the protégé has met the developmental objectives in the Agreement;

(4) The extent to which the mentor's participation in the Mentor- Protégé Program impacted the protégé'(s) ability to receive contract(s) and subcontract(s) from private firms and federal agencies other than VA; and, if deemed necessary;

(5) Input from the protégé on the nature of the developmental assistance provided by the mentor.

(b) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor(s)' performance in the Program.

(c) In addition to the written progress report in paragraph (a) of this section, at the mid-term point in the Mentor-Protégé Agreement, the mentor and the protégé shall formally brief the VA OSDBU regarding program accomplishments as pertains to the approved agreement.

(d) Mentor and protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

#### **819.7114 Measurement of program success.**

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

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

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

#### **819.7115 Solicitation provisions.**

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

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

[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, VA Subcontracting Compliance Review Program and new clauses at 852.219-74, Limitations on Subcontracting—Monitoring and Compliance, 852.219-75, Subcontracting Commitments Monitoring and Compliance, and 852.219-76, Subcontracting Plans Monitoring and Compliance. VAAR 819.72 will implement VA's Subcontracting Compliance Review Program. The deviation also rescinds Information Letter 001AL-11-15, Subcontracting Compliance Review Program, dated June 8,

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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 Review Program manual. The SCRП 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), OSDBU 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 SCRCP 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 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,

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(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.

**SUBCHAPTER H—CLAUSES AND FORMS****PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****Subpart 852.1—Instructions for Using Provisions and Clauses****Sec.**

- 852.101 Using part 852.  
852.102 Incorporating provisions and clauses.

**Subpart 852.2—Text of Provisions and Clauses**  
*(Revised 11/15/2021)*

- 852.203-70 Commercial Advertising.  
852.203-71 [Reserved]  
852.204-70 Personal Identity Verification of Contractor Personnel.  
852.207-70 Report of employment under commercial activities.  
852.209-70 Organizational Conflicts of Interest.  
852.211-70 Equipment Operation and Maintenance Manuals.  
852.211-71 [Reserved]  
852.211-72 Technical Industry Standards.  
852.211-73 [Reserved]  
852.211-74 [Reserved]  
852.211-75 [Reserved]  
852.212-70 Provisions and Clauses Applicable to VA Acquisition of Commercial Items.  
852.212-71 Gray Market Items.  
852.214-70 [Reserved]  
852.214-71 Restrictions on alternate item(s).  
852.214-72 Alternate item(s).  
852.214-73 Alternate packaging and packing.  
852.214-74 Marking of bid samples.  
852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.  
852.215-71 Evaluation Factor Commitments.  
852.215-72 Notice of Intent to Re-Solicit.  
852.216-70 [Reserved]  
852.216-71 Economic Price Adjustment of Contract Price(s) Based on a Price Index.  
852.216-72 Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.  
852.216-73 Economic Price Adjustment—State Nursing Home Care for Veterans.  
852.216-74 Economic Price Adjustment—Medicaid Labor Rates.  
852.216-75 Economic Price Adjustment Clause—Fuel Surcharge.

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852.216-76	Requirements—Supplement for Mortuary Services.
852.217-70	Contract Action Definitization
852.219-9	VA Small Business Subcontracting Plan Minimum Requirements.
852.219-10	VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION)
852.219-11	VA Notice of Total Veteran-Owned Small Business Set-Aside. (DEVIATION)
852.219-71	VA Mentor-Protégé Program.
852.219-72	Evaluation Factor for Participation in the VA Mentor-Protégé Program.
852.219-74	Limitations on Subcontracting—Monitoring and Compliance. (DEVIATION)
852.219-75	Subcontracting Commitments Monitoring and Compliance. (DEVIATION)
852.219-76	Subcontracting Plans Monitoring and Compliance. (DEVIATION)
852.219-77	VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.(DEVIATION)
852.219-78	VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.(DEVIATION)
852.222-70	Contract Work Hours and Safety Standards—Nursing Home Care for Veterans.
852.223-70	Instructions to Offerors—Sustainable Acquisition Plan.
852.223-71	Safety and Health.
852.228-70	Bond premium adjustment.
852.228-71	Indemnification and Insurance.
852.228-72	Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.
852.228-73	Indemnification of Contractor—Hazardous Research Projects.
852.229-70	[Reserved]
852.229-71	[Reserved]
852.232-70	Payments Under Fixed-Price Construction Contracts (Without NAS-CPM).
852.232-71	Payments Under Fixed-Price Construction Contracts (Including NAS-CPM)
852.232-72	Electronic Submission of Payment Requests.
852.233-70	Protest Content/Alternative Dispute Resolution.
852.233-71	Alternate Protest Procedure.
852.236-70	[Reserved]
852.236-71	Specifications and Drawings for Construction.
852.236-72	Performance of Work by the Contractor.
852.236-73	[Reserved]
852.236-74	[Reserved]
852.236-75	[Reserved]
852.236-76	[Reserved]
852.236-77	[Reserved]
852.236-78	[Reserved]

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852.236-79	Contractor Production Report.
852.236-80	Subcontracts and Work Coordination.
852.236-81	[Reserved]
852.236-82	[Reserved]
852.236-83	[Reserved]
852.236-84	[Reserved]
852.236-85	[Reserved]
852.236-86	[Reserved]
852.236-87	[Reserved]
852.236-88	[Reserved]
852.236-89	[Reserved]
852.236-90	Restriction on Submission and Use of Equal Products.
852.236-91	[Reserved]
852.236-92	Notice to Bidders—Additive or Deductive Bid Line Items.
852.237-70	Indemnification and Medical Liability Insurance.
852.237-71	Nonsmoking Policy for Children’s Services.
852.237-72	Crime Control Act—Reporting of Child Abuse.
852.237-73	Crime Control Act—Requirement for Background Checks.
852.237-74	Non-Discrimination in Service Delivery.
852.237-75	Key Personnel.
852.237-76	Award to Single Offeror.
852.237-77	Area of Performance.
852.237-78	Performance and Delivery.
852.237-79	Subcontracting.
852.237-80	Health Department and Transport Permits.
852.241-70	Disputes—Utility Contracts.
852.242-70	Government Construction Contract Administration.
852.242-71	Administrative Contracting Officer.
852.243-70	Construction Contract Changes—Supplement.
852.246-70	[Reserved]
852.246-71	Rejected Goods.
852.246-72	Frozen Processed Foods.
852.246-73	Noncompliance with Packaging, Packing and/or Marking Requirements.
852.246-74	[Reserved]
852.246-75	Warranty of Construction—Guarantee Period Services.
852.246-76	Purchase of Shellfish.
852.247-70	Determining Transportation Costs for Evaluation of Offers.
852.247-71	Delivery Location.
852.247-72	Marking Deliverables.
852.247-73	Packing for Domestic Shipment.
852.247-74	Advance Notice of Shipment.
852.247-75	Bills of Lading.
852.249-70	Termination for Default—Supplement for Mortuary Services.
852.252-70	Solicitation provisions or clauses incorporated by reference.
852.270-1	Representatives of contracting officers.

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852.270-2	[Reserved]
852.270-3	[Reserved]
852.271-70	[Reserved]
852.271-71	[Reserved]
852.271-72	Time spent by counselee in counseling process.
852.271-73	Use and publication of counseling results.
852.271-74	Inspection.
852.271-75	Extension of contract period.
852.273-70	Late offers.
852.273-71	Alternative negotiation techniques.
852.273-72	Alternative evaluation.
852.273-73	Evaluation – health-care resources.
852.273-74	Award without exchanges.

AUTHORITY: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

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

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

**852.102 Incorporating provisions and clauses.**

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

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

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

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

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

(f) If one or more 48 CFR Chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the [FAR](#) provision or clause required by paragraph (c) or (d) of this section the following Internet address:

<http://www1.va.gov/oamm/acquisitions/ars/policyreg/vaar/index.htm>

**Subpart 852.2—Text of Provisions and Clauses**

**852.203-70 Commercial advertising.**

As prescribed in [803.570-2](#), insert the following clause:

**COMMERCIAL ADVERTISING (MAY 2018)**

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

(End of clause)

**852.203-71 [RESERVED]**

**852.204-70 Personal Identity Verification of Contractor Personnel.**

As prescribed in [804.1303](#), insert the following clause:

**PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL  
(MAY 2020)**

(a) The Contractor shall comply with current Department of Veterans Affairs policy for personal identity verification of all employees performing under this contract when frequent and continuing access to VA facilities or information systems is required.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to VA facilities or information systems.

(End of clause)



**852.207-70 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 (OCT 2020)**

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

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

organizational conflicts of interest.

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

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

(End of provision)

#### **852.211-70 Equipment Operation and Maintenance Manuals.**

As prescribed in [811.107-70](#), insert the following clause:

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

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

(End of clause)

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

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

As prescribed in [811.204-70](#), insert the following clause:

**TECHNICAL INDUSTRY STANDARDS (NOV 2018)**

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

(b) The Contractor shall submit proof of conformance to the standard. This proof may be a label or seal affixed to the equipment or supplies, warranting that the item(s) have been tested in accordance with the standards and meet the contract requirement. Proof may also be furnished by the organization listed above certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

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

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

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

(End of clause)

**852.211-73 [RESERVED]**

**852.211-74 [RESERVED]**

**852.211-75 [RESERVED]**

**852.212-70 Provisions and Clauses Applicable to VA Acquisition of Commercial Items.**

As prescribed in [812.301\(f\)\(1\)](#), insert the following clause to indicate provisions and clauses applicable to this acquisition:

**PROVISIONS AND CLAUSES APPLICABLE TO  
VA ACQUISITION OF COMMERCIAL ITEMS (APR 2020)**

(a) The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The following provisions and clauses that have been checked by the Contracting Officer are incorporated by

reference.

- \_\_\_ [852.203-70](#), Commercial Advertising.
- \_\_\_ [852.209-70](#), Organizational Conflicts of Interest.
- \_\_\_ [852.211-70](#), Equipment Operation and Maintenance Manuals.
- \_\_\_ [852.214-71](#), Restrictions on Alternate Item(s).
- \_\_\_ [852.214-72](#), Alternate Item(s). [Note: this is a fillable clause.]
- \_\_\_ [852.214-73](#), Alternate Packaging and Packing.
- \_\_\_ [852.214-74](#), Marking of Bid Samples.
- \_\_\_ [852.215-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.
- \_\_\_ [852.215-71](#), Evaluation Factor Commitments.
- \_\_\_ [852.216-71](#), Economic Price Adjustment of Contract Price(s) Based on a Price Index.
- \_\_\_ [852.216-72](#), Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.
- \_\_\_ [852.216-73](#), Economic Price Adjustment—State Nursing Home Care for Veterans.
- \_\_\_ [852.216-74](#), Economic Price Adjustment—Medicaid Labor Rates.
- \_\_\_ [852.216-75](#), Economic Price Adjustment—Fuel Surcharge.
- \_\_\_ [852.219-9](#), VA Small Business Subcontracting Plan Minimum Requirements.
- \_\_\_ [852.219-10](#), VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
- \_\_\_ [852.219-11](#), VA Notice of Total Veteran-Owned Small Business Set-Aside.
- \_\_\_ [852.222-70](#), Contract Work Hours and Safety Standards—Nursing Home Care for Veterans.
- \_\_\_ [852.228-70](#), Bond Premium Adjustment.
- \_\_\_ [852.228-71](#), Indemnification and Insurance.
- \_\_\_ [852.228-72](#), Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.
- \_\_\_ [852.232-72](#), Electronic Submission of Payment Requests.
- \_\_\_ [852.233-70](#), Protest Content/Alternative Dispute Resolution.
- \_\_\_ [852.233-71](#), Alternate Protest Procedure.
- \_\_\_ [852.237-70](#), Indemnification and Medical Liability Insurance.
- \_\_\_ [852.246-71](#), Rejected Goods.
- \_\_\_ [852.246-72](#), Frozen Processed Foods.
- \_\_\_ [852.246-73](#), Noncompliance with Packaging, Packing, and/or Marking Requirements.
- \_\_\_ [852.270-1](#), Representatives of Contracting Officers.
- \_\_\_ [852.271-72](#), Time Spent by Counselor in Counseling Process.
- \_\_\_ [852.271-73](#), Use and Publication of Counseling Results.
- \_\_\_ [852.271-74](#), Inspection.
- \_\_\_ [852.271-75](#), Extension of Contract Period.
- \_\_\_ [852.273-70](#), Late Offers.
- \_\_\_ [852.273-71](#), Alternative Negotiation Techniques.
- \_\_\_ [852.273-72](#), Alternative Evaluation.

\_\_\_ [852.273-73](#), Evaluation—Health-Care Resources.

\_\_\_ [852.273-74](#), Award without Exchanges.

(b) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the following clause:

\_\_\_ [852.237-74](#), Nondiscrimination in Service Delivery.

(End of clause)

### **852.212-71 Gray Market Items.**

As prescribed in [812.301\(f\)\(2\)](#), insert the following provision in solicitations and contracts for new medical equipment:

#### **GRAY MARKET ITEMS (APR 2020)**

(a) No gray market or remanufactured items will be acceptable. Gray market items are Original Equipment Manufacturers' (OEM) goods sold through unauthorized channels in direct competition with authorized distributors. This procurement is for new OEM medical equipment only for VA medical facilities.

(b) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

### **852.214-70 [RESERVED]**

### **852.214-71 Restrictions on alternate item(s).**

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

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

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

(End of provision)

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

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

**852.214-72 Alternate item(s).**

As prescribed in [814.201-6\(a\)\(2\)](#), insert the following provision:

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

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

(End of provision)

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

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

**852.214-73 Alternate Packaging and Packing.**

As prescribed in [814.201-6\(a\)\(3\)](#), insert the following provision:

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

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

(End of provision)

**852.214-74 Marking of Bid Samples.**

As prescribed in [814.201-6\(b\)](#), insert the following provision:

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

Any bid sample(s) furnished must be in the quantities specified in the solicitation. Cases or packages must be plainly marked "Bid Sample(s)" with the complete lettering/numbering and description of the related bid item(s), the number of the Invitation for Bids, and the name of the bidder submitting the bid sample(s).

(End of provision)

**852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.**

As prescribed in [815.304-71\(a\)](#), insert the following clause:



**SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED  
SMALL BUSINESS EVALUATION FACTORS (OCT 2019)**

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

(b) Eligible service-disabled veteran-owned small businesses offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in the [Vendor Information Pages \(VIP\) database](#).

(c) Non-Veteran offerors proposing to use SDVOSBs or VOSBs 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 [VIP database](#).

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

**852.215-71 Evaluation Factor Commitments.**

As prescribed in [815.304-71\(b\)](#), insert the following clause:

**EVALUATION FACTOR COMMITMENTS (OCT 2019)**

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

(b) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB

status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

**852.215-72 Notice of Intent to Re-Solicit.**

As prescribed at [815.370-5](#), use the following provision:

**NOTICE OF INTENT TO RE-SOLICIT (OCT 2019)**

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and re-solicit for an additional period of at least 30 days in accordance with [815.370-2](#).

(End of provision)

**852.216-70 [Reserved]**

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

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

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

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

(b) The Base and Adjusting Indexes, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_,<sup>1</sup> as contained in \_\_\_\_\_,<sup>2</sup> as

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Notes:

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

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

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published by \_\_\_\_\_.<sup>3</sup> All adjustments authorized under this clause shall be made by using the Base Index and Adjusting Indexes, which are published \_\_\_\_\_.<sup>4</sup>

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

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

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

(d) The dates of contract adjustment shall be \_\_\_\_\_<sup>6</sup> and the starting dates of each option year, if not already included in these dates. The Contracting Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified in this paragraph (d), shall obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting

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

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

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

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

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

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

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(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,

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reflecting the new adjusted prices for that first contract adjustment period in that option year.

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

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

(End of clause)

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Notes:

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

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

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

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

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

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

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

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

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**Notes:**

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

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

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

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

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

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

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

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

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**Notes:**

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

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

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

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

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

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

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

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

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

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

Equals increase (or decrease) to the  
Base Index \$0.570

Divide increase (or decrease) to the  
Base Index by the Base Index  $\$0.570 \div \$1.559 = .3656^*$   
(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)

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Divide increase (or decrease) to the Base Index by the Base Index	$(\$0.11) + \$1.559 = (.0706)$ (7.06% decrease)
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Base Cost of \$0.21 (10% of \$2.10) multiplied by (.0706) = (\$0.0148) unit price decrease.

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

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

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

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

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

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and the unit cost per mile has increased in this sample for the first option year from \$2.10 to \$2.25.

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

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

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

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

(End of clause)

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Notes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

As prescribed in [816.203-4\(e\)\(4\)](#), insert the following clause:

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

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

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

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

(1) Include the price adjustment and its effective date;

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

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

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

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

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

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

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

(End of clause)

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

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

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

(a) To the extent that contract fuel cost increases are provided for by this economic price adjustment clause, the Contractor warrants that the prices in this

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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 \$.03 cents per delivered case.
\$1.80 Calculation:	



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

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

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

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

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

(End of clause)

### **852.216-76 Requirements—Supplement for Mortuary Services.**

As prescribed in [816.506-70](#), use the following clause:

#### **REQUIREMENTS—SUPPLEMENT FOR MORTUARY SERVICES (OCT 2019)**

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

- (2) The quantities to be furnished;
- (3) Delivery or performance dates;
- (4) Place of delivery or performance;
- (5) Packing and shipping instructions;
- (6) The address to send invoices; and
- (7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract:

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

(End of clause)

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

As prescribed in [817.7005\(a\)](#), insert the following clause:

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

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

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

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

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

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

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

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

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

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

(End of clause)

**852.219-9 VA Small Business Subcontracting Plan Minimum Requirements.**

As prescribed in subpart [819.709](#), insert the following clause:

**VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009)**

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

(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.]

[[Deviation per Class Deviation from VA Acquisition Regulation Part 819—Small Business Programs and Part 852-Solicitation Provisions and Contract Clauses](#), dated July 12, 2019 revises VAAR clauses at 852.219-10 and 852.219-11. The class deviation effectively updates the language set forth in Class Deviation—

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Veterans First Contracting Programs (VFCP 2016), Attachment 9—VAAR Part 819, Small Business Programs, and Attachment 10—VAAR Part 852, Solicitation Provisions and Contract Clauses, dated July 25, 2016. The remaining text in Attachments 9 and 10 in Class Deviation VFCP 2016, continues to be in effect. The class deviation incorporates the Small Business Administration’s regulatory and legislative changes and clarifies the applicability of limitations on subcontracting and nonmanufacturer requirements to contracts awarded under the VFCP. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per [Class Deviation](#) from VA Acquisition Regulation Part 852—Solicitation Provisions and Contract Clauses, dated December 23, 2020 revises VAAR clauses at 852.219-10 and 852.219-11. The class deviation authorizes deviations from contract clauses 852.219-10, VA Notice of Total Service- Disabled Veteran-Owned Small Business Set-Aside; and 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside to implement regulatory changes made by the Small Business Administration to limitations on subcontracting in its final rule published in the Federal Register at 81 FR 34243 on May 31, 2016. The revisions implement regulatory changes, as advised by the Civilian Agency Acquisition Council (CAAC) letter 2019-01, Supplement 1, issued July 2, 2020. This deviation partially supersedes previous class deviation issued July 12, 2019, to VAAR clauses 852.219-10 and 852.219-11 found in Attachment 10 of Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016. The remaining text in both class deviations continue to be in effect. 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 (NOV 2020) (DEVIATION)**

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

(1) Means a small business concern—

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

(ii) The management and daily business operations of which are

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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 part 74 and is listed in [VA's Vendor Information Pages \(VIP\) database](#); and

(v) The business will comply with [VAAR subpart 819.70](#) and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any reference therein to a service-disabled veteran-owned small business concern (SDVO SBC), is to be construed to apply to a VA verified and VIP-listed SDVOSB unless otherwise stated in this clause.

(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).

(3) The term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term "small business concern owned and controlled by Veterans with service-connected disabilities" has the meaning given the term "small business concern owned and controlled by service-disabled Veterans" under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)), except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) above).

(b) *General.*

(1) Offers are solicited only from VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed SDVOSBs at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed SDVOSB who is eligible at the time of submission of offer(s) and at the time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only VIP-listed SDVOSBs are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible SDVOSB as defined

in this clause, 38 CFR part 74, and [VAAR subpart 819.70](#).

(d) *Agreement*. When awarded a contract action, including orders under multiple- award contracts, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in [VAAR subpart 819.70](#) and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406(b) and 125.6. Unless otherwise stated in this clause, a requirement in 13 CFR part 121 and 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed SDVOSB. For the purpose of limitations on subcontracting, only VIP-listed SDVOSBs (including independent contractors) shall be considered eligible and/or “similarly situated” (*i.e.*, a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to the following:

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

(2) *Supplies or products*.

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

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

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

(4) *Special trade construction contractors*. In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms that are not VIP-listed SDVOSBs.

(5) *Subcontracting*. An SDVOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For contracts referenced in (d)(2), (3), and (4) the cost of materials is excluded and are not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs may be excluded to the extent they are not the principal

purpose of the acquisition and small businesses do not provide them. For additional information and more specific requirements on the limitations on subcontracting, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* An SDVOSB shall comply with the limitations on subcontracting as follows:

[*Contracting Officer check as appropriate.*]

\_\_\_\_\_ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

\_\_\_\_\_ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as an SDVOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to apply to a VIP-listed SDVOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* Any inconsistencies between the requirements of the SBA Program for SDVO SBCs, and the VA Veterans First Contracting Program, as defined in [VAAR subpart 819.70](#) and this clause, the VA Veterans First Contracting Program takes precedence.

(h) *Misrepresentation.* Pursuant to 38 USC 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406, Debarment).

(End of clause)

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

[[Deviation per Class Deviation from VA Acquisition Regulation Part 819—Small Business Programs and Part 852-Solicitation Provisions and Contract Clauses](#), dated July 12, 2019 revises VAAR clauses at 852.219-10 and 852.219-11. The class deviation effectively updates the language set forth in [Class Deviation—](#)



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Veterans First Contracting Programs (VFCP 2016), Attachment 9—VAAR Part 819, Small Business Programs, and Attachment 10—VAAR Part 852, Solicitation Provisions and Contract Clauses, dated July 25, 2016. The remaining text in Attachments 9 and 10 in Class Deviation VFCP 2016, continues to be in effect. The class deviation incorporates the Small Business Administration’s regulatory and legislative changes and clarifies the applicability of limitations on subcontracting and nonmanufacturer requirements to contracts awarded under the VFCP. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

[Deviation per [Class Deviation](#) from VA Acquisition Regulation Part 852—Solicitation Provisions and Contract Clauses, dated December 23, 2020 revises VAAR clauses at 852.219-10 and 852.219-11. The class deviation authorizes deviations from contract clauses 852.219-10, VA Notice of Total Service- Disabled Veteran-Owned Small Business Set-Aside; and 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside to implement regulatory changes made by the Small Business Administration to limitations on subcontracting in its final rule published in the Federal Register at 81 FR 34243 on May 31, 2016. The revisions implement regulatory changes, as advised by the Civilian Agency Acquisition Council (CAAC) letter 2019-01, Supplement 1, issued July 2, 2020. This deviation partially supersedes previous class deviation issued July 12, 2019, to VAAR clauses 852.219-10 and 852.219-11 found in Attachment 10 of Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016. The remaining text in both class deviations continue to be in effect. 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 subpart [819.7009](#), insert the following clause:

#### **VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE (NOV 2020) (DEVIATION)**

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

(1) Means a small business concern—

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

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

(iii) The business meets Federal small business size standards for the

applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR part 74 and is listed in [VA's Vendor Information Pages \(VIP\) database](#); and

(v) The business will comply with [VAAR subpart 819.70](#) and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any requirement therein that applies to a service-disabled Veteran-owned small business concern (SDVO SBC), is to be construed to also apply to a VA verified and VIP-listed VOSB, unless otherwise stated in this clause.

(vi) Unless otherwise stated, the term VOSB includes VIP-listed service-disabled veteran-owned small businesses (SDVOSB).

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

(3) The term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term "small business concern owned and controlled by Veterans" has the meaning given that term under section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)), except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) above).

(b) *General.*

(1) Offers are solicited only from VIP-listed VOSBs, including VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made only to a VIP-listed VOSB who is eligible at the time of submission of offer(s) and at time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as a VOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only VIP-listed VOSBs are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible VOSB as defined in this clause, 38 CFR part 74, and [VAAR subpart 819.70](#).

(d) *Agreement.* When awarded a contract action, including orders under

multiple- award contracts, a VOSB agrees that in the performance of the contract, the VOSB shall comply with requirements in [VAAR subpart 819.70](#) and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406 and 125.6. Unless otherwise stated in this clause, any requirement in 13 CFR part 121 and part 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed VOSB. For the purpose of the limitations on subcontracting, only a VIP-listed VOSB, (including independent contractors) is considered eligible and/or “similarly situated” (*i.e.*, a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to the following:

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

(2) *Supplies or products*.

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

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

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

(4) *Special trade construction contractors*. In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms that are not VIP-listed VOSBs.

(5) *Subcontracting*. A VOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For contracts referenced in (d)(2), (3), and (4), the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period*. A VOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

\_\_\_\_\_ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

\_\_\_\_\_ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as a VOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to also apply to a VIP-listed VOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* Any inconsistencies between the requirements of the SBA Program for SDVO SBCs and the VA Veterans First Contracting Program, as defined in [VAAR subpart 819.70](#) and this clause, the VA Veterans First Contracting Program takes precedence.

(h) *Misrepresentation.* Pursuant to 38 USC 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's VOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406, Debarment).

(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 819.72 will implement VA's Subcontracting Compliance Review Program. The deviation also rescinds Information Letter 001AL-11-15, Subcontracting Compliance Review Program, dated June 8, 2011. This deviation will remain in effect until incorporated into the VAAR or the VAAM, or is otherwise rescinded.]

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

As prescribed in [819.7203\(a\)](#) insert the following clause:

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

(a) This solicitation includes

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

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

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

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

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

Contracting Officer to assess the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

(End of clause)

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

As prescribed in [819.7203\(b\)](#) insert the following:

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

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

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

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

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

(End of clause)

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

As prescribed in [819.7203\(c\)](#) insert the following clause:

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

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

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

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

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

(End of clause)

[Deviation per VA Acquisition Regulation (VAAR) [Class Deviation](#) to Implement Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) Certification Requirements—VAAR Part 819 and Part 852, dated September 15, 2021. The class deviation implements the requirements of P.L. 116-183, Protecting Business Opportunities for Veterans Act of 2019 to amend 38 U.S.C. 8127. The class deviation adds: 1) language at 819.7001 regarding responsibilities and the requirement for certifications; 2) compliance with limitations on subcontracting requirements for eligibility at 819.7003; 3) prescriptions for two new VAAR classes at 819.7009; and, 4) the two new clauses at 852.219-77 and 852.219-78. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]



**852.219-77 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.**

As prescribed in [819.7009\(b\)](#), insert the following clause:

**VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (SEP 2021) (DEVIATION)**

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see [FAR 2.101](#) definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Contracting Officer check the appropriate box below based on the predominant NAICS code assigned to the instant acquisition as set forth in [FAR 19.102](#).*]

(i)  Services. In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in [852.219-10](#) or VOSBs as set forth in [852.219-11](#). Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii)  General construction. In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in [852.219-10](#) or VOSBs as set forth in [852.219-11](#). Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii)  Special trade construction contractors. In the case of a contract for special trade contractors, the contractor will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in [852.219-10](#) or VOSBs as set forth in [852.219-11](#). Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges

that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

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

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. The Contracting Officer may, at their discretion, require the Contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the Contracting Officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/ fill-in required. The formal certification must be completed, signed, and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

**Certification:**

I hereby certify that if awarded the contract, [*insert name of offeror*] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of [*insert name of offeror*].

**Printed Name of Signee:** \_\_\_\_\_

**Printed Title of Signee:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Company Name and Address:** \_\_\_\_\_

(End of clause)

**852.219-78 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.**

As prescribed in [819.7009\(c\)](#), insert the following clause. The Contracting Officer shall tailor the clause in paragraph (a)(2)(iii) as appropriate:

**VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (SEP 2021) (DEVIATION)**

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see [FAR 2.101](#) definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Offeror check the appropriate box*]

(i)  In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP- listed SDVOSBs as set forth in [852.219-10](#) or VOSBs as set forth in [852.219-11](#). Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(ii)  In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor,

unless a waiver as described in 13 CFR 121.406(b)(5) is granted. The offeror understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification.  
[Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying itself as either a manufacturer or nonmanufacturer]:

(i)  Manufacturer or producer. The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii)  Nonmanufacturer. The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required to qualify as a nonmanufacturer. [Offeror fill-in—check each box below.]

The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii)  The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. [Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.]

or [Contracting Officer tailor clause to remove one or other block under subparagraph (iii).]

If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by

small business concerns. [*Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.*]

(3) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(4) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

- (i) Referral to the VA Suspension and Debarment Committee;
- (ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and
- (iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. Contracting Officer may, at their discretion, require the Contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the Contracting Officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed, and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

**Certification:**

I hereby certify that if awarded the contract, [*insert name of offeror*] qualifies as a manufacturer or nonmanufacturer as stated herein and that if awarded the contract, [*insert name of offeror*] will comply with the limitations on subcontracting requirement specified in the resultant contract, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. I further certify that I am authorized to execute this certification on behalf of [*insert name of offeror*].

**Printed Name of Signee:** \_\_\_\_\_

**Printed Title of Signee:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Company Name and Address:** \_\_\_\_\_

(End of clause)

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

As prescribed in [822.305](#), insert the following clause:

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

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

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

(2) There is an agreement or understanding between the Contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;

(3) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees' regular hourly rate of pay for work in excess of 80 hours in any

14 day period; and

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

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

(End of clause)

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

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

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

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

(End of provision)

### **852.223-71 Safety and Health.**

As prescribed by [823.303-70](#), the Contracting Officer shall insert the following clause:

#### **SAFETY AND HEALTH (SEP 2019)**

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

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

materials and the conduct of research, development, or test projects:

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

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

(2) The following Government guidelines are recommended for developing and implementing health and safety operating procedures and practices for both personnel and facilities:

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

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

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

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

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



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

(End of clause)

#### **852.228-70 Bond Premium Adjustment.**

As prescribed in [828.106-70](#), insert the following clause:

##### **BOND PREMIUM ADJUSTMENT (JAN 2008)**

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

(End of clause)

#### **852.228-71 Indemnification and Insurance.**

As prescribed in [828.306](#), insert the following clause:

##### **INDEMNIFICATION AND INSURANCE (MAR 2018)**

(a) *Indemnification.* The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this contract. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the Contractor, and subject to the approval by the Contracting Officer, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of this contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workers' compensation and employer's liability coverage will conform to applicable State law requirements for the service defined, whereas general liability and automobile liability of comprehensive type shall, in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. State-approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs, subject to timely certifications by such sources of the

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

(End of clause)

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

As prescribed in [828.106-71](#), insert the following clause:

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

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

(End of clause)

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

As prescribed in [828.7003](#), insert the following clause:

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

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

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

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

(b) The Government shall indemnify a Contractor for:

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

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

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

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

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

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

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

(d) Actions in event of a claim—

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

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

(End of clause)

**852.229-70 [Reserved]**

**852.229-71 [Reserved]**

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

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

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

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

(a) Retainage.

(1) The Contracting Officer may retain funds—

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

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

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

(i) Unsatisfactory progress as determined by the Contracting Officer;

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

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

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

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

(b) The Contractor shall submit a schedule of cost to the Contracting Officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will

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be one of the bases for determining progress payments to the Contractor for work completed. This schedule shall show cost by the work activity/event for each building or unit of the contract, as instructed by the resident engineer.

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

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

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

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

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

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

<u>System</u>	<u>Percent</u>
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
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

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Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

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

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

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

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

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

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

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

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

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

(End of clause)

*Alternate 1* (NOV 2018). If the specifications include guarantee period services, the Contracting Officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

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

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

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

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

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

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

(a) Retainage.

(1) The Contracting Officer may retain funds—

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

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

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

(i) Unsatisfactory progress as determined by the Contracting Officer;

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

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

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

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

(b) The Contractor shall submit a schedule of cost in accordance with the requirements of section "Network Analysis System—Critical Path Method (NAS—CPM)" to the Contracting Officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the Contractor for work completed.

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

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

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

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

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

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

<b>System</b>	<b>Percent</b>
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5



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Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

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

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

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

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

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

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

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

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

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

(End of clause)

*Alternate 1* (NOV 2018). If the specifications include guarantee period services, the Contracting Officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

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

(ii) The Contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The Contractor shall also submit the established salary costs, including employee fringe benefits, and what the Contractor reasonably expects to pay over the guarantee period, all of which will be subject to the Contracting Officer's approval.

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

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

As prescribed in [832.7001-2](#), insert the following clause:

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

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

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

(2) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be

contractually designated as the receiving entity. This office may be different from the office issuing the payment;

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

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

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

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

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

(1) VA's Electronic Invoice Presentment and Payment System at the current website address provided in the contract.

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI).

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

(e) *Exceptions*. If, based on one of the circumstances in this paragraph (e), the Contracting Officer directs that payment requests be made by mail, the Contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for—

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

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

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

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

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

(End of clause)

**852.233-70 Protest Content/Alternative Dispute Resolution.**

As prescribed in [833.106-70\(a\)](#), insert the following provision:

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

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

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

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

(3) Include an original signed by the protester or the protester's representative and at least one copy;

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

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

(6) State the form of relief requested; and

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

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

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

(End of provision)

**852.233-71 Alternate Protest Procedure.**

As prescribed in [833.106-70\(b\)](#), insert the following provision:

**ALTERNATE PROTEST PROCEDURE (OCT 2018)**

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

(b) The protest will not be considered if the interested party has a protest on the same or similar issue(s) pending with the Contracting Officer.

(End of provision)

**852.236-70 [Reserved]**

**852.236-71 Specifications and Drawings for Construction.**

As prescribed in [836.521](#), insert the following clause:

**SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION  
(APR 2019)**

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

(a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the Disputes clause.

(b) The Contractor shall—

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

(c) In general--

(1) Drawings of greater detail shall govern over drawings of lesser detail unless specifically noted otherwise; and

(2) Figures and numerical quantities noted on drawings govern over scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

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

<u>Title</u>	<u>File</u>	<u>Drawing No.</u>
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(End of clause)

### **852.236-72 Performance of Work by the Contractor.**

As prescribed in [836.501](#), insert the following clause:

#### **PERFORMANCE OF WORK BY THE CONTRACTOR (APR 2019)**

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

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

(c) Changes to established activity/event identifiers or responsibility codes for

Contractor activities shall not be made without approval from the Contracting Officer.

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

(End of clause)

*Alternate 1* (APR 2019). For requirements which include a Network Analysis System (NAS), substitute the following paragraph (b) for paragraph (b) of the basic clause:

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

**852.236-73 [Reserved]**

**852.236-74 [Reserved]**

**852.236-76 [Reserved]**

**852.236-77 [Reserved]**

**852.236-78 [Reserved]**

**852.236-79 Contractor Production Report.**

As prescribed in [836.573](#), insert the following clause:

**CONTRACTOR PRODUCTION REPORT (APR 2019)**

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

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

(End of clause)

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

As prescribed in [836.574](#), insert the following clause:

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

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

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

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

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

(End of clause)

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

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



elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades' coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

**852.236-82 [Reserved]**

**852.236-83 [Reserved]**

**852.236-84 [Reserved]**

**852.236-85 [Reserved]**

**852.236-86 [Reserved]**

**852.236-87 [Reserved]**

**852.236-88 [Reserved]**

**852.236-89 [Reserved]**

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

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

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

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

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Notwithstanding the "Material and Workmanship" clause of this contract, [FAR 52.236-5\(a\)](#), nor any other clause or provision, only brand name products for the items listed above will be authorized for use on this contract.

(End of clause)

**852.236-91 [Reserved]**

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

As prescribed in [836.580](#), insert the following provision:

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

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

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

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

(i) Is otherwise eligible for award; and

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

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

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

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

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

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

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

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

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

(End of provision)

### **852.237-70 Indemnification and Medical Liability Insurance.**

As prescribed in [837.403-70\(a\)](#), insert the following clause:

#### **INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (OCT 2019)**

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) [37.101](#), under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care

providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [Contracting Officer's Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.] However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

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

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

(d) The Contractor shall notify the Contracting Officer within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

**852.237–71 Nonsmoking Policy for Children’s Services.**

As prescribed in [837.403-70\(b\)](#), insert the following clause:

**NONSMOKING POLICY FOR CHILDREN’S SERVICES (OCT 2019)**

(a) Smoking in facilities where certain federally funded children’s services are provided shall be prohibited. The Pro-children Act of 2001 (20 USC 7181-7183) prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children’s services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

**852.237–72 Crime Control Act—Reporting of Child Abuse.**

As prescribed in [837.403-70\(c\)](#), insert the following clause:

**CRIME CONTROL ACT OF 1990—REPORTING OF CHILD ABUSE (OCT 2019)**

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

**852.237–73 Crime Control Act—Requirement for Background Checks.**

As prescribed in [837.403-70\(d\)](#), insert the following clause:

**CRIME CONTROL ACT OF 1990—REQUIREMENT FOR BACKGROUND CHECKS (OCT 2019)**

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services, as defined in the act, to children under the age of 18 undergo a criminal background check.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under the contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

**852.237–74 Non-Discrimination in Service Delivery.**

As prescribed in [837.110-70\(a\)](#), the Contracting Officer shall insert the following clause in solicitations and contracts:

**852.237–74 Non-Discrimination in Service Delivery (OCT 2019)**

It is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

**852.237-75 Key Personnel.**

As prescribed in [837.110-70\(b\)](#), insert the following clause:

**KEY PERSONNEL (OCT 2019)**

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract. If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

(End of clause)]

**852.237-76 Award to Single Offeror.**

As prescribed in [837.7001\(a\)\(1\)](#), insert the following provision:

**AWARD TO SINGLE OFFEROR (OCT 2019)**

- (a) Award shall be made to a single offeror.
- (b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.
- (c) The Government will evaluate offers on the basis of the estimated quantities shown.
- (d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

*Alternate 1 (OCT 2019).* As prescribed in [837.7001\(a\)\(2\)](#), insert the following paragraph (d) in lieu of paragraph (d) of the basic provision:

- (d) Award will be made to that responsive, responsible offeror whose total

aggregate offer is in the best interest of the Government.

**852.237-77 Area of Performance.**

As prescribed in [837.7001\(b\)\(1\)](#), insert the following clause:

**AREA OF PERFORMANCE (OCT 2019)**

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

**852.237-78 Performance and Delivery.**

As prescribed in [837.7001\(b\)\(2\)](#), insert the following clause:

**PERFORMANCE AND DELIVERY (OCT 2019)**

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.



(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection is completed.

(End of clause)

**852.237-79 Subcontracting.**

As prescribed in [837.7001\(b\)\(3\)](#), insert the following clause:

**SUBCONTRACTING (OCT 2019)**

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

**852.237-80 Health Department and Transport Permits.**

As prescribed in [837.7001\(b\)\(4\)](#), insert the following clause:

**HEALTH DEPARTMENT AND TRANSPORT PERMITS (OCT 2019)**

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

**852.241-70 Disputes—Utility Contracts.**

As prescribed in [841.501-70](#), insert the following clause:

**DISPUTES—UTILITY CONTRACTS (SEP 2020)**

(a) *Definition.* As used in this clause, *Independent regulatory body* means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

(b) *Independent Regulatory Body determinations.* The requirements of the Disputes clause at [FAR 52.233-1](#) are supplemented to provide that matters

involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to any determinations by the independent regulatory body having jurisdiction.

(End of clause)

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

As prescribed in [842.272](#), insert the following clause. This is a fill-in clause.

#### **GOVERNMENT CONSTRUCTION CONTRACT ADMINISTRATION (OCT 2020)**

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

[Insert name and office address of Contracting Officer]

*[Note: If any of the functions set forth in [FAR 42.302](#) are to be retained by the Contracting Officer, identify those as well with the notation: "With the exception of the following contract administration functions: \_\_\_\_\_."*

*Delete this notation if not required.]*

(b) The following functions will be retained by the Contracting Officer or Administrative Contracting Officer (ACO) and are not redelegable to Resident Engineers:

- (1) Award of contract modifications either through supplemental agreements or change orders that exceed the ACO's appointed warrant limitations.
- (2) Issuance of default letters.
- (3) Issuance of Cure or Show-Cause Notices.
- (4) Suspension of work letters and/or modifications.
- (5) Issuance of Contracting Officer final determination letters.
- (6) Issuance of termination notices.
- (7) Authorization of final payment.

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

(d) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements. Within the limits of any specific authority delegated by the Contracting Officer, the resident engineer may, by written direction, make changes in the work. The Contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(e) The Contracting Officer or an Administrative Contracting Officer identified in paragraph (a) may further delegate limited authority and specialized support services responsibilities below to the following warranted Resident Engineer personnel on site, not to exceed the dollar value and threshold of their warrant:

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

(1) Conduct post-award orientation conferences.

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

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

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

(End of clause)

#### **852.242-71 Administrative Contracting Officer.**

As prescribed in [842.271](#), insert the following clause:

##### **ADMINISTRATIVE CONTRACTING OFFICER (OCT 2020)**

The Contracting Officer reserves the right to designate an Administrative Contracting Officer (ACO) for the purpose of performing certain tasks/duties in the administration of the contract. Such designation will be in writing through an ACO Letter of Delegation and will identify the responsibilities and limitations of the ACO. A copy of the ACO Letter of Delegation will be furnished to the Contractor.

(End of clause)

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

As prescribed in [843.205-70](#), the Contracting Officer shall insert this clause in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold. The Contracting Officer shall fill in the number of days in which

a Contractor must assert its right to an equitable adjustment; however, such amount shall not exceed 60 calendar days.

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

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

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

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

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

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

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

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

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

(1) As a basis for negotiation, allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. This declining scale will also be used to negotiate the prime Contractor's or upper-tier subcontractor's fee when work is performed by lower-tier subcontractors and will be based on the net increased cost to the prime or upper-tier subcontractor, as applicable. Profit (fee) shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs. Allowable percentages on changes will not exceed the following;

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

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

(c)(1) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security policy, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the Contractor's overhead and/or fee percentage.

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

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

(End of clause)

**852.246-70 [RESERVED]**

**852.246-71 Rejected Goods.**

As prescribed in [846.370-1](#), insert the following clause:

**REJECTED GOODS (OCT 2018)**

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

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

(End of clause)

**852.246-72 Frozen Processed Foods.**

As prescribed in [846.370-2](#), insert the following clause:

**FROZEN PROCESSED FOODS (OCT 2018)**

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

(End of clause)

**852.246-73 Noncompliance with Packaging, Packing, and/or Marking Requirements.**

As prescribed in [846.370-3](#), insert the following clause:

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

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the Contractor,

to perform the required repackaging, repacking, and/or marking services and charge the Contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the Contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of clause)

**852.246-74 [RESERVED]**

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

As prescribed in [846.702-70\(e\)](#), insert the following clause:

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

The clause [52.246-21](#), Warranty of Construction, is supplemented as follows:

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

(End of clause)

**852.246-76 Purchase of Shellfish.**

As prescribed in [846.370-4](#) insert the following clause:

**PURCHASE OF SHELLFISH (OCT 2018)**

The supplier certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on

current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

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

As prescribed in [847.305-70](#), insert the following provision:

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

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

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

(End of provision)

### **852.247-71 Delivery Location.**



As prescribed in [847.302](#), insert a clause substantially as follows:

**DELIVERY LOCATION (OCT 2018)**

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

(End of clause)

**852.247-72 Marking Deliverables.**

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

**MARKING DELIVERABLES (OCT 2018)**

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

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

(End of clause)

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

As prescribed in [847.305-10\(b\)](#), insert the following clause:

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

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

(End of clause)

**852.247-74 Advance Notice of Shipment**

As prescribed in [847.305-71\(a\)](#), insert the following clause:

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

\_\_\_\_\_ [*Insert number of work days*] work days prior to shipping item(s).  
\_\_\_\_\_ [*Insert items to be shipped*], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to \_\_\_\_\_ [*Insert individual(s) to receive notification*] and to the Contracting Officer.

(End of clause)

**852.247-75 Bills of Lading.**As prescribed in [847.305-71\(b\)](#), insert the following clause:**BILLS OF LADING (OCT 2018)**

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

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

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

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

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

(b) *Government bills of lading.*

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

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

- (i) Item identification/description.
- (ii) Origin and destination.
- (iii) Individual and total weights.

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

(End of clause)

**852.249-70 Termination for Default—Supplement for Mortuary Services.**

As prescribed in [849.504-70](#), insert the following clause:

**TERMINATION FOR DEFAULT—SUPPLEMENT FOR MORTUARY SERVICES  
(MAY 2020)**

The FAR clause entitled “Default (Fixed-Price Supply and Service)” at [52.249-8](#), is supplemented as follows:

The Contracting Officer may terminate this contract for default by written notice without the ten-day notice required by paragraph (a)(2) of the Default clause if—

(a) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Veteran Affairs in fulfilling its responsibility for proper care of remains;

(b) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(c) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(d) The Contractor refuses to perform the services required for any particular remains; or

(e) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

**852.252-70 Solicitation provisions or clauses incorporated by reference.**

As prescribed in [852.102\(a\)](#), insert the following provision:

**SOLICITATION PROVISIONS OR CLAUSES INCORPORATED BY REFERENCE  
(JAN 2008)**

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

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

(End of provision)

**852.270-1 Representatives of contracting officers.**

As prescribed in [801.603-70\(d\)](#), insert the following provision:

**REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)**

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

(End of provision)

**852.270-2 [RESERVED]**

**852.270-3 [RESERVED]**

**852.271-70 [RESERVED]**

**852.271-71 [RESERVED]**

**852.271-72 Time spent by counselee in counseling process.**

As prescribed in [871.212](#), insert the following clause:

**TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (APR 1984)**

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

(End of clause)

**852.271-73 Use and publication of counseling results.**

As prescribed in [871.212](#), insert the following clause:

**USE AND PUBLICATION OF COUNSELING RESULTS (JAN 2008)**

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

(End of clause)

**852.271-74 Inspection.**

As prescribed in [871.212](#), insert the following clause:

**INSPECTION (JAN 2008)**

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

(End of clause)

**852.271-75 Extension of contract period.**

As prescribed in [871.212](#), insert the following clause:

**EXTENSION OF CONTRACT PERIOD (APR 1984)**

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration

date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of clause)

**852.273-70 Late offers.**

As prescribed in [873.110\(a\)](#), insert the following provision:

**LATE OFFERS (JAN 2003)**

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

(End of provision)

**852.273-71 Alternative negotiation techniques.**

As prescribed in [873.110\(b\)](#), insert the following provision:

**ALTERNATIVE NEGOTIATION TECHNIQUES (JAN 2003)**

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

(End of provision)

**852.273-72 Alternative evaluation.**

As prescribed in [873.110\(c\)](#), insert the following provision:

**ALTERNATIVE EVALUATION (JAN 2003)**

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by [Contracting officer insert description of how the

information may be viewed electronically or otherwise]. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

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

(End of provision)

### **852.273-73 Evaluation – health-care resources.**

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

#### **EVALUATION – HEALTH-CARE RESOURCES (JAN 2003)**

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

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

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

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

(End of provision)

**852.273-74 Award without exchanges.**

As prescribed in [873.110\(e\)](#), insert the following provision:

**AWARD WITHOUT EXCHANGES (JAN 2003)**

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

(End of provision)