



# VA Acquisition Regulation Update

November 1, 2021

Number 2008-32

1. **Material Transmitted:** The attached pages contain revisions to the Department of Veterans Affairs Acquisition Regulation (VAAR) parts 802, Definitions of Words and Terms; 806 Competition Requirements; 852, Solicitation Provisions and Contract Clauses; 853, Prescription of Forms; 871, Vocational Rehabilitation and Employment Programs; and 873, Simplified Procedures for Health-Care Resources.

2. **Summary of Changes:** This VAAR update provides:

a. Revisions to the VAAR part 806 that were published in a Federal Register Notice as a final rule at [86 FR 54111](#) (document number 2021-20926) on September 30, 2021 with an effective date of November 1, 2021, and which adopted as a final rule the proposed rule published February 1, 2019.

b. Revisions to the VAAR part 873, and affected part 852, that were published in a Federal Register Notice as a final rule at [86 FR 54117](#) (document number 2021-20922) on September 30, 2021 with an effective date of November 1, 2021, and which adopted as a final rule the proposed rule published January 21, 2021.

c. Editorial changes to the VAAR parts 802, 852, and 853, that were published in a Federal Register Notice as a final rule at [86 FR 54402](#) (document number 2021-20921)

on October 1, 2021 with an effective date of November 1, 2021, and which adopted as a final rule the proposed rule published June 30, 2020.

d. Revisions to the VAAR part 871, and affected part 852, that were published in a Federal Register Notice as a final rule at [86 FR 54405](#) (document number 2021-20891) on October 1, 2021 with an effective date of November 1, 2021, and which adopted as a final rule the proposed rule published June 30, 2020.

e. Text revisions are listed and summarized below:

<b>VAAR Part/Subpart</b>	<b>Title</b>	<b>Change Summary</b>
TOC	Table of Contents	Revised at parts 871 and 873
806	Competition Requirements	Revised in its entirety.
802.1	Definitions.	Amended by: 1) Revising definitions for “Chief Acquisition Officer,” “HCA,” “SPE,” and “VIP;” 2) Adding “COR;” and 3) Removing “COTR,” “DSPE,” and “Resident Engineer.”
806.004-70	Definition.	Added.
806.102	Use of competitive procedures	Revised.
806.203	Set-asides for small business concerns.	Added.
806.270	Set-asides for Verified Veteran-owned small businesses.	Renumbered, renamed, and revised.
806.302	Circumstances permitting other than full and open competition.	Revised.
806.302-5	Authorized or required by statute.	Revised.
806.302-570	Noncompetitive procedures for verified Veteran-owned small businesses.	Renumbered, renamed, and revised.
806.302-571	Authorized or required by statute-VA unique authorities.	Added.
806.302-7	Public interest.	Removed.
806.304	[Reserved]	Removed.
806.501	Requirement.	Revised.
806.570	Planning requirements.	Removed.
852.101-70	Using Part 852.	Redesignated from 852.101.
852.102	Incorporating provisions and clauses.	Revised.
852.203-70	Commercial Advertising.	Revise heading.
852.207-70	Report of Employment under Commercial Activities.	Revise heading.
852.214-71	Restrictions on Alternate Items(s).	Revise heading.
852.214-72	Alternate Item(s).	Revise heading.
852.214-73	Alternate Packaging and Packing.	Revise heading.
852.214-74	Marking of Bid Samples.	Revise heading.
852.216-75	Economic Price Adjustment—Fuel Surcharge.	Revised.

<b>VAAR Part/Subpart</b>	<b>Title</b>	<b>Change Summary</b>
852.228-70	Bond Premium Adjustment.	Revise heading.
852.232-72	Electronic Submission of Payment Requests.	Revise heading.
852.246-73	Noncompliance with Packaging, Packing, and/or Marking Requirements.	Revise heading.
852.252-70	Solicitation Provisions or Clauses Incorporated by Reference.	Revise heading.
852.270-1	Representatives of Contracting Officers.	Revise heading.
852.271-72	Time Spent by Counselee in Counseling Process.	Revised.
852.271-73	Use and Publication of Counseling Results.	Revised.
852.271-74	Inspection of Instruction, Counseling or Testing Operations.	Renamed and revised.
852.271-75	Extension of contract period.	Removed and Reserved.
852.273-70	Late Offers.	Revised.
852.273-71	Alternative Negotiation Techniques.	Revised.
852.273-72	Alternative Evaluation.	Revised.
852.273-73	Evaluation—Health-Care Resources.	Revised.
852.273-74	Award Without Exchanges.	Revised.
853	Forms	Revised.
853.201	Federal acquisition system.	Removed.
853.201-1	Contracting authority and responsibilities (SF 1402).	Removed.
853.215	Contracting by negotiation.	Removed.
853.215-70	VA Form 10-1170, Application for Furnishing Nursing Home Care to Beneficiaries of VA.	Removed.
853.236	Construction and architect-engineer contracts.	Revised.
853.236-70	VA Form 6298, Architect-Engineer Fee Proposal.	Revised.
853.236-71	VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services).	Revised.
853.236-72	VA Form 10101, Contractor Production Report.	Revised.
853.271	Loan Guaranty, Education and Vocational Rehabilitation and Counseling Programs.	Removed.
853.271-1	Loan Guaranty Program (VA Forms 26-6724 and 26-1839).	Removed.
852.271-2	Education Programs.	Removed
871	Vocational Rehabilitation and Employment Programs	Revised in its entirety.
871.1	Loan Guaranty and Direct Loan Programs	Removed and Reserved.
871.2	Vocational Rehabilitation and Employment Service	Revised.
871.200	Scope of subpart.	Revised.
871.201	General.	Revised.

<b>VAAR Part/Subpart</b>	<b>Title</b>	<b>Change Summary</b>
871.201-1	Requirements for the use of contracts.	Revised.
871.201-2	Requirements when contracts are not required.	Removed.
871.201-3	Medical services.	Removed.
871.201-4	Letter contracts.	Removed.
871.202	Marking and release of supplies.	Removed.
871.203.	Renewals or supplements to contracts.	Removed.
871.204	Guaranteed payment.	Removed.
871.205	Proration of charges.	Revised.
871.206	Other fees and charges.	Revised.
871.207	Payment of tuition or fees.	Revised.
871.208	Rehabilitation facilities.	Revised.
871.209	Prohibition on advertising—training of Veterans.	Renamed and Revised.
871.210	Contract clauses.	Revised.
873	Simplified Procedures for Health-Care Resources	Revised.
873.101	Policy.	Revised.
873.102	Definitions.	Revised.
873.103	Priority sources.	Revised.
873.104	Competition requirements.	Revised.
873.105	Acquisition planning.	Revised.
873.106	Exchanges with industry before receipt of proposals.	Renamed and revised.
873.107	Socioeconomic programs.	Revised.
873.108	Publicizing contract actions.	Revised.
873.109	General requirements for acquisition of health-care resources.	Revised.
873.110	Solicitation provisions.	Revised.
873.111	Acquisition strategies for health-care resources.	Revised.
873.112	Evaluation information.	Revised.
873.113	Exchanges with offerors.	Revised.
873.114	Best value pool.	Revised.
873.115	Proposal revisions.	Revised.
873.116	Source selection decision.	Revised.
873.117	Award to successful offeror.	Revised.
873.118	Debriefings.	Revised.

### 3. Filing Instructions:

<b>Remove pages:</b>	<b>Insert Pages:</b>
TOC-1 thru TOC-4	TOC-1 Thru TOC-4
802-1 thru 802-6	802-1 thru 802-6
806-1 thru 806-8	806-1 thru 806-6

<b>Remove pages:</b>	<b>Insert Pages:</b>
TOC-1 thru TOC-4	TOC-1 Thru TOC-4
802-1 thru 802-6	802-1 thru 802-6
852-1 thru 852-94	852-1 thru 852-94
853-1 thru 853-4	853-1 thru 853-4
871-1 thru 871-10	871-1 thru 871-6
873-1 thru 873-16	873-1 thru 873-14

**Effective date:** November 1, 2021.

**TABLE OF CONTENTS**

**TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS**

**SUBCHAPTER A—GENERAL**

*(Revised 11/1/2021)*

- Part 801 DEPARTMENT OF VETERANS AFFAIRS ACQUISITION  
REGULATION SYSTEM
- Part 802 DEFINITIONS OF WORDS AND TERMS
- Part 803 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS  
OF INTEREST
- Part 804 ADMINISTRATIVE AND INFORMATION MATTERS

**SUBCHAPTER B—ACQUISITION PLANNING**

*(Revised 11/1/2021)*

- Part 805 [RESERVED]
- Part 806 COMPETITION REQUIREMENTS
- Part 807 ACQUISITION PLANNING
- Part 808 REQUIRED SOURCES OF SUPPLIES AND SERVICES
- Part 809 CONTRACTOR QUALIFICATIONS
- Part 810 MARKET RESEARCH
- Part 811 DESCRIBING AGENCY NEEDS
- Part 812 ACQUISITION OF COMMERCIAL ITEMS

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

*(Revised 10/4/2019)*

- Part 813 SIMPLIFIED ACQUISITION PROCEDURES
- Part 814 SEALED BIDDING
- Part 815 CONTRACTING BY NEGOTIATION
- Part 816 TYPES OF CONTRACTS
- Part 817 SPECIAL CONTRACTING METHODS

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

*(Revised 1/27/2021)*

- Part 819 SMALL BUSINESS PROGRAMS
- Part 822 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
- Part 823 ENVIRONMENTAL, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
- Part 824 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION
- Part 825 [RESERVED]
- Part 826 OTHER SOCIOECONOMIC PROGRAMS

**SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS**

*(Revised 10/24/18)*

- Part 827 PATENTS, DATA, AND COPYRIGHTS
- Part 828 BONDS AND INSURANCE
- Part 829 TAXES

- Part 830 [RESERVED]
- Part 831 CONTRACT COST PRINCIPLES AND PROCEDURES
- Part 832 CONTRACT FINANCING
- Part 833 PROTESTS, DISPUTES, AND APPEALS

**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**

*(Revised 4/18/2019)*

- Part 836 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS
- Part 837 SERVICE CONTRACTING
- Part 839 [RESERVED]
- Part 841 ACQUISITION OF UTILITY SERVICES

**SUBCHAPTER G—CONTRACT MANAGEMENT**

*(Revised 7/16/2020)*

- Part 842 CONTRACT ADMINISTRATION AND AUDIT SERVICES
- Part 844 SUBCONTRACTING POLICIES AND PROCEDURES
- Part 845 GOVERNMENT PROPERTY
- Part 846 QUALITY ASSURANCE
- Part 847 TRANSPORTATION
- Part 849 TERMINATION OF CONTRACTS

**SUBCHAPTER H—CLAUSES AND FORMS**

*(Revised 11/1/2021)*

- Part 852 SOLICITATION PROVISIONS AND CONTRACT CLAUSES
- Part 853 FORMS



**SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS**

*(Revised 11/1/2021)*

- Part 870 [RESERVED]
- Part 871 VOCATIONAL REHABILITATION AND EMPLOYMENT  
PROGRAMS
- Part 872 [RESERVED]
- Part 873 SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES

**SUBCHAPTER A—GENERAL**

**PART 802—DEFINITIONS OF WORDS AND TERMS**

**Subpart 802.1 – Definitions**

**Sec.**  
802.101            Definitions

|

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

This page intentionally left blank.

**Subpart 802.1 – Definitions**  
(Revised 11/1/2021)

[[Deviation per Class Deviation from VAAR Parts 802, 812, and 852 Regarding Gray Market and Counterfeit Medical and Information Technology Items, dated March 26, 2020](#), revises VAAR 802.101 to add the definition for gray market items. This deviation expires once incorporated in the VAAR or the VA Acquisition Manual (VAAM) or is otherwise rescinded.]

[[Deviation per Class Deviation–Veterans First Contracting Program \(VFCP 2016\)](#), dated July 25, 2016, revises VAAR 802.101 to add the definition for Public Law (Pub. L.) 109-461; replaces the definition for Service-disabled Veteran-owned small business (SDVOSB); adds the definition for VA Rule of Two; replaces the definition for Vendor Information Pages (VIP); adds the definition for Veterans First Contracting Program; and replaces the definition for Veteran-owned small business (VOSB). This deviation is effective until incorporated in the VAAR or the VA Acquisition Manual (VAAM) or is otherwise rescinded.]

**802.101 Definitions.**

A/E means architect/engineer.

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

*COR* means Contracting Officer’s Representative.

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

GAO means the Government Accountability Office.

Gray market items are original equipment manufacturer goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

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

OGC means the Office of the General Counsel.

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

Service-disabled Veteran-owned small business (SDVOSB) has the same meaning as service-disabled Veteran-owned small business concern defined in [FAR 2.101](#), except for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the

## Part 802—Definitions of Words and Terms

Veterans First Contracting Program. These businesses must be listed as verified in the [VIP database](#). In addition, some of the SDVOSB businesses listed in the [VIP database](#) may be owned and controlled by a surviving spouse. See definition of surviving spouse in 802.101.

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

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

Surviving spouse means an individual who has been listed in the Department of Veterans Affairs' (VA) Veterans Benefits Administration (VBA) database of Veterans and family members. To be eligible for inclusion in the [VetBiz.gov VIP](#) database, the following conditions must apply:

(1) If the death of the Veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled Veterans, the surviving spouse of such Veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that Veteran for the purpose of maintaining the status of the small business concern as a service-disabled Veteran-owned small business.

(2) The period referred to above is the period beginning on the date on which the Veteran dies and ending on the earliest of the following dates:

- (i) The date on which the surviving spouse remarries;
- (ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;
- (iii) The date that is 10 years after the date of the Veteran's death;
- (iv) The date on which the business concern is no longer small under federal small business size standards.

(3) The Veteran must have had a 100 percent service-connected disability rating or the Veteran died as a direct result of a service-connected disability.

VA means the Department of Veterans Affairs.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

VA Rule of Two means the process in 38 U.S.C. 8127(d) whereby a contracting officer of the Department "shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans if the contracting

Part 802—Definitions of Words and Terms

---

officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.” For purposes of this VA specific rule, a service-disabled Veteran-owned small business (SDVOSB) or a Veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR 819.7003 and be listed as verified in the [Vendor Information Pages \(VIP\) database](#).

*Vendor Information Pages (VIP)* means the VetBiz.va.gov VIP database at <https://www.vetbiz.va.gov/vip/>.

Veteran-owned small business (VOSB) has the same meaning as Veteran-owned small business concern defined in [FAR 2.101](#), except for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program. These businesses must be listed as verified in the [VIP database](#). A business whose SDVOSB status derives from ownership and control by a surviving spouse shall also be considered a VOSB.

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

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

This page intentionally left blank.

**SUBCHAPTER B—ACQUISITION PLANNING**

**PART 806—COMPETITION REQUIREMENTS**

**Sec.**

806.004-70 Definition.

**Subpart 806.1—Full and Open Competition**

806.102 Use of competitive procedures.

**Subpart 806.2—Full and Open Competition After Exclusion of Sources**

806.203 Set-asides for small business concerns.

806.270 Set-asides for verified Veteran-owned small businesses.

**Subpart 806.3—Other Than Full and Open Competition**

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

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

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

**Subpart 806.5—Advocates for Competition**

**806.501 Requirement.**

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



**PART 806—COMPETITION REQUIREMENTS**

**806.004-70 Definition.**

As used in this part—

*Health-care resources* has the same definition as that provided in 873.102.

**Subpart 806.1—Full and Open Competition**

**806.102 Use of competitive procedures.**

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

**Subpart 806.2—Full and Open Competition After Exclusion of Sources**

**806.203 Set-asides for small business concerns.**

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

**806.270 Set-asides for verified Veteran-owned small businesses.**

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

(b) The requirement in this section to set aside procurements for VIP verified SDVOSBs and VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts. (38 U.S.C. 8127-8128)

**Subpart 806.3—Other Than Full and Open Competition**

**806.302 Circumstances permitting other than full and open competition.**

**806.302-5 Authorized or required by statute.**

**806.302-570 Noncompetitive procedures for verified Veteran-owned small businesses.**

(a) *Sole source awards made to a verified SDVOSB or VOSB.* Full and open competition need not be provided for when awarding a sole source contract under paragraph (b) or (c) of this section, to a verified SDVOSB or VOSB in accordance with 819.7007 or 819.7008, respectively, as authorized. Contracts awarded using the authority in this paragraph (a) shall be supported by the applicable justification and approval requirements of FAR 6.302-5(c)(2)(ii), 6.303, and 6.304.

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

(c) *Sole source awards above the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION

---

a contract to a VIP verified SDVOSB first, then VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

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

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

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

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

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

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

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

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

(38 U.S.C. 8123)

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION

---

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

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

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

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION

---

(c) *Written justifications and approvals.* Contracts awarded using an authority in this section, with the exception of acquisitions authorized under paragraph (b)(2) of this section, shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304.

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

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

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

(ii) Clinics; and

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

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

## DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION

---

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

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

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

### **Subpart 806.5—Advocates for Competition**

#### **806.501 Requirement.**

The Associate Executive Director, Office of Procurement Policy, Systems and Oversight (AED, PPSO) is designated as the VA Advocate for Competition for the agency. The AED, PPSO may further delegate the authority in this section to appoint an alternate agency advocate for competition and shall designate procuring activity advocates for competition in accordance with FAR 6.501. A complete list of VA procuring activity advocates for competition can be found at

<https://www.va.gov/oal/business/pps/competition-advocates.asp>.

**SUBCHAPTER H—CLAUSES AND FORMS****PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****Subpart 852.1—Instructions for Using Provisions and Clauses**  
*(Revised 11/1/2021)***Sec.**

- 852.101-70 Using part 852.  
852.102 Incorporating provisions and clauses.

**Subpart 852.2—Text of Provisions and Clauses**  
*(Revised 11/1/2021)*

- 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.

## Part 852—Solicitation Provisions and Contract Clauses

---

852.216-75	Economic Price Adjustment Clause—Fuel Surcharge.
852.216-76	Requirements—Supplement for Mortuary Services.
852.217-70	Contract Action Definitization
852.219-9	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]



Part 852—Solicitation Provisions and Contract Clauses

---

852.236-78	[Reserved]
852.236-79	Contractor Production Report.
852.236-80	Subcontracts and Work Coordination.
852.236-81	[Reserved]
852.236-82	[Reserved]
852.236-83	[Reserved]
852.236-84	[Reserved]
852.236-85	[Reserved]
852.236-86	[Reserved]
852.236-87	[Reserved]
852.236-88	[Reserved]
852.236-89	[Reserved]
852.236-90	Restriction on Submission and Use of Equal Products.
852.236-91	[Reserved]
852.236-92	Notice to Bidders—Additive or Deductive Bid Line Items.
852.237-70	Indemnification and Medical Liability Insurance.
852.237-71	Nonsmoking Policy for Children’s Services.
852.237-72	Crime Control Act—Reporting of Child Abuse.
852.237-73	Crime Control Act—Requirement for Background Checks.
852.237-74	Non-Discrimination in Service Delivery.
852.237-75	Key Personnel.
852.237-76	Award to Single Offeror.
852.237-77	Area of Performance.
852.237-78	Performance and Delivery.
852.237-79	Subcontracting.
852.237-80	Health Department and Transport Permits.
852.241-70	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.

Part 852—Solicitation Provisions and Contract Clauses

---

852.270-1	Representatives of Contracting Officers.
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 of Instruction, Counseling or Testing Operations.
852.271-75	[Reserved]
852.273-70	Late Offers.
852.273-71	Alternative Negotiation Techniques.
852.273-72	Alternative Evaluation.
852.273-73	Evaluation – Health-Care Resources.
852.273-74	Award Without Exchanges.

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

**Subpart 852.1—Instructions for Using Provisions and Clauses****852.101-70 Using part 852.**

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

**852.102 Incorporating provisions and clauses.**

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

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

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

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

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

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

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

**852.203-70 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 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.

(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

---

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>".

Part 852—Solicitation Provisions and Contract Clauses

---

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.

## Part 852—Solicitation Provisions and Contract Clauses

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.



Part 852—Solicitation Provisions and Contract Clauses

---

(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,

Part 852—Solicitation Provisions and Contract Clauses

---

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)

---

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)

---

**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."

## Part 852—Solicitation Provisions and Contract Clauses

(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

---

Notes:

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

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

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

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

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

## Part 852—Solicitation Provisions and Contract Clauses

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)

Divide increase (or decrease) to the Base Index by the Base Index	$(\$0.11) + \$1.559 = (.0706)$ (7.06% decrease)
--	--

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

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

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

Adjusting Index (most recent Index cost of gasoline as of the first day of the first option period)	\$1.899 per gallon
---	--------------------

Minus the Base Index (Index cost of gasoline as of the date of receipt of offers)	\$1.559 per gallon
---	--------------------

Equals increase (or decrease) to the Base Index	\$0.340
---	---------

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

Base Cost of \$0.225 (10%\* of \$2.25) multiplied by .2181 = \$0.0491 unit price increase.

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

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

Part 852—Solicitation Provisions and Contract Clauses

---

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)

---

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 (NOV 2021)**

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

Part 852—Solicitation Provisions and Contract Clauses

---

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:	

Part 852—Solicitation Provisions and Contract Clauses

---

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

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

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

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

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

(End of clause)

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

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

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

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

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

(1) The supplies or services being ordered;

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

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

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

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

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

(End of clause)

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

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

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

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

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

---



---



---

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

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

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

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

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

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

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

(End of clause)

**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—



Part 852—Solicitation Provisions and Contract Clauses

---

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

Part 852—Solicitation Provisions and Contract Clauses

---

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—](#)

## Part 852—Solicitation Provisions and Contract Clauses

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



## Part 852—Solicitation Provisions and Contract Clauses

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

Part 852—Solicitation Provisions and Contract Clauses

---

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

## Part 852—Solicitation Provisions and Contract Clauses

---

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>
--------------	-------------	--------------------

(End of clause)

### **852.236-72 Performance of Work by the Contractor.**

As prescribed in [836.501](#), insert the following clause:

#### **PERFORMANCE OF WORK BY THE CONTRACTOR (APR 2019)**

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

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

(c) Changes to established activity/event identifiers or responsibility codes for

Contractor activities shall not be made without approval from the Contracting Officer.

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

(End of clause)

*Alternate 1* (APR 2019). For requirements which include a Network Analysis System (NAS), substitute the following paragraph (b) for paragraph (b) of the basic clause:

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

**852.236-73 [Reserved]**

**852.236-74 [Reserved]**

**852.236-76 [Reserved]**

**852.236-77 [Reserved]**

**852.236-78 [Reserved]**

**852.236-79 Contractor Production Report.**

As prescribed in [836.573](#), insert the following clause:

**CONTRACTOR PRODUCTION REPORT (APR 2019)**

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

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

(End of clause)

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

As prescribed in [836.574](#), insert the following clause:

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

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

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

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

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

(End of clause)

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

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

elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades' coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

**852.236-82 [Reserved]**

**852.236-83 [Reserved]**

**852.236-84 [Reserved]**

**852.236-85 [Reserved]**

**852.236-86 [Reserved]**

**852.236-87 [Reserved]**

**852.236-88 [Reserved]**

**852.236-89 [Reserved]**

---

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

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

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

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

---

---

---

Notwithstanding the "Material and Workmanship" clause of this contract, [FAR 52.236-5\(a\)](#), nor any other clause or provision, only brand name products for the items listed above will be authorized for use on this contract.

(End of clause)

**852.236-91 [Reserved]**

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

As prescribed in [836.580](#), insert the following provision:

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

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

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

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

(i) Is otherwise eligible for award; and

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

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

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

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

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

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

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

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

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

(End of provision)

### **852.237-70 Indemnification and Medical Liability Insurance.**

As prescribed in [837.403-70\(a\)](#), insert the following clause:

#### **INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (OCT 2019)**

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) [37.101](#), under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care

providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [Contracting Officer's Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.] However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

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

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

(d) The Contractor shall notify the Contracting Officer within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)



**852.237–71 Nonsmoking Policy for Children’s Services.**

As prescribed in [837.403-70\(b\)](#), insert the following clause:

**NONSMOKING POLICY FOR CHILDREN’S SERVICES (OCT 2019)**

(a) Smoking in facilities where certain federally funded children’s services are provided shall be prohibited. The Pro-children Act of 2001 (20 USC 7181-7183) prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children’s services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

**852.237–72 Crime Control Act—Reporting of Child Abuse.**

As prescribed in [837.403-70\(c\)](#), insert the following clause:

**CRIME CONTROL ACT OF 1990—REPORTING OF CHILD ABUSE (OCT 2019)**

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

**852.237–73 Crime Control Act—Requirement for Background Checks.**

As prescribed in [837.403-70\(d\)](#), insert the following clause:

**CRIME CONTROL ACT OF 1990—REQUIREMENT FOR BACKGROUND CHECKS (OCT 2019)**

(a) Public Law 101–647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services, as defined in the act, to children under the age of 18 undergo a criminal background check.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) The Contractor shall comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under the contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

**852.237–74 Non-Discrimination in Service Delivery.**

As prescribed in [837.110-70\(a\)](#), the Contracting Officer shall insert the following clause in solicitations and contracts:

**852.237–74 Non-Discrimination in Service Delivery (OCT 2019)**

It is the policy of the Department of Veterans Affairs that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of VA programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

**852.237-75 Key Personnel.**

As prescribed in [837.110-70\(b\)](#), insert the following clause:

**KEY PERSONNEL (OCT 2019)**

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract. If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

(End of clause)]

**852.237-76 Award to Single Offeror.**

As prescribed in [837.7001\(a\)\(1\)](#), insert the following provision:

**AWARD TO SINGLE OFFEROR (OCT 2019)**

- (a) Award shall be made to a single offeror.
- (b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.
- (c) The Government will evaluate offers on the basis of the estimated quantities shown.
- (d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

*Alternate 1 (OCT 2019).* As prescribed in [837.7001\(a\)\(2\)](#), insert the following paragraph (d) in lieu of paragraph (d) of the basic provision:

- (d) Award will be made to that responsive, responsible offeror whose total

aggregate offer is in the best interest of the Government.

**852.237-77 Area of Performance.**

As prescribed in [837.7001\(b\)\(1\)](#), insert the following clause:

**AREA OF PERFORMANCE (OCT 2019)**

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

**852.237-78 Performance and Delivery.**

As prescribed in [837.7001\(b\)\(2\)](#), insert the following clause:

**PERFORMANCE AND DELIVERY (OCT 2019)**

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection is completed.

(End of clause)

**852.237-79 Subcontracting.**

As prescribed in [837.7001\(b\)\(3\)](#), insert the following clause:

**SUBCONTRACTING (OCT 2019)**

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

**852.237-80 Health Department and Transport Permits.**

As prescribed in [837.7001\(b\)\(4\)](#), insert the following clause:

**HEALTH DEPARTMENT AND TRANSPORT PERMITS (OCT 2019)**

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

**852.241-70 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 [871.210](#), insert the following clause:

**TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (NOV 2021)**

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

(End of clause)

**852.271-73 Use and Publication of Counseling Results.**

As prescribed in [871.210](#), insert the following clause:

**USE AND PUBLICATION OF COUNSELING RESULTS (NOV 2021)**

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

(End of clause)

**852.271-74 Inspection of Instruction, Counseling or Testing Operations.**

As prescribed in [871.210](#), insert the following clause:

**INSPECTION OF INSTRUCTION, COUNSELING OR TESTING OPERATIONS (NOV 2021)**

The Contractor shall permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and to examine the training facilities, the work of the Veterans in training under this contract, and the records of these operations, along with any other rights to examine records and conduct inspections

in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.

(End of clause)

**852.271-75 [Reserved]**

**852.273-70 Late Offers.**

As prescribed in [873.110\(a\)](#), insert the following provision:

**LATE OFFERS (NOV 2021)**

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

(End of provision)

**852.273-71 Alternative Negotiation Techniques.**

As prescribed in [873.110\(b\)](#), insert the following provision:

**ALTERNATIVE NEGOTIATION TECHNIQUES (NOV 2021)**

The Contracting Officer may elect to use the alternative negotiation techniques described in [873.111\(d\)](#) in conducting this procurement. If used, Offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

**852.273-72 Alternative Evaluation.**

As prescribed in [873.110\(c\)](#), insert the following provision:

**ALTERNATIVE EVALUATION (NOV 2021)**

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be

posted and may be viewed by [*Contracting Officer insert description of how the information may be viewed electronically or otherwise*]. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible Offeror submitting the lowest priced offer will be in line for award.

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

(End of provision)

### **852.273-73 Evaluation—Health-Care Resources.**

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

#### **EVALUATION—HEALTH-CARE RESOURCES (NOV 2021)**

(a) The Government will award a contract resulting from this solicitation to the responsible Offeror whose proposal, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers: [*Contracting Officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the Contracting Officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The Contracting Officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.*]

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

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of a proposal, mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the

Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received by the Contracting Officer before award.

(End of provision)

**852.273-74 Award Without Exchanges.**

As prescribed in [873.110\(e\)](#), insert the following provision:

**AWARD WITHOUT EXCHANGES (NOV 2021)**

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

(End of provision)

**SUBCHAPTER H—CLAUSES AND FORMS**

**PART 853—FORMS**

*(Revised 11/1/2021)*

**Sec.**

853.000 Scope of part.

**Subpart 853.1—General**

853.107 Obtaining forms.

**Subpart 853.2—Prescription of Forms**

853.236 Construction and architect-engineer contracts.  
853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.  
853.236-71 VA Form 2138, Order for Supplies or Services (Including Task  
Orders for Construction or A-E Services).  
853.236-72 VA Form 10101, Contractor Production Report.

**Subpart 853.3—Illustration of Forms**

853.300 Scope of subpart.

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

This page intentionally left blank.

**853.000 Scope of part.**

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

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

VA forms may be obtained online at <https://www.va.gov/vaforms/> or upon request from any VA contracting office.

**SUBPART 853.2—PRESCRIPTION OF FORMS****853.236 Construction and architect-engineer contracts.****853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.**

VA Form 6298 is prescribed for use by contractors to submit proposals, as specified in See [836.7001\(a\)](#).

**853.236-71 VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services).**

VA Form 2138 is prescribed for use to order supplies or services, including task orders for construction or A-E services, as specified in [836.7001\(b\)](#).

**853.236-72 VA Form 10101, Contractor Production Report.**

VA Form 10101 is prescribed for use by contractors to submit required information to the resident engineer, as specified in [836.7001\(c\)](#).

**SUBPART 853.3—ILLUSTRATION OF FORMS****853.300 Scope of subpart.**

VA Forms will not be illustrated in this VAAR. Persons wishing to obtain copies of VA forms prescribed in the VAAR may do so in accordance with [853.107](#). VA forms may also be available on the Web at <http://www.va.gov/vaforms/>.

**SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS**

**PART 871—VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS**

*(Revised 11/1/2021)*

**Subpart 871.1 (RESERVED)**

**Subpart 871.2 - Vocational Rehabilitation and Employment Service**

871.200	Scope of subpart.
871.201	General.
871.201-1	Requirements for the use of contracts.
871.205	Proration of charges.
871.206	Other fees and charges.
871.207	Payment of tuition or fees.
871.208	Rehabilitation facilities.
871.209	Records and reports.
871.210	Prohibition on advertising—training of Veterans.
871.211	Information concerning correspondence courses.
871.212	Contract clauses.

Authority: 38 U.S.C. Chapter 31; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.



This page intentionally left blank.

**Subpart 871.1 - (RESERVED)****Subpart 871.2 - Vocational Rehabilitation and Employment Service****871.200 Scope of subpart.**

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

(a) Contracts for training and rehabilitation services.

(b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31.

(c) Contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36.

**871.201 General.****871.201-1 Requirements for the use of contracts.**

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

(a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses* means those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

**871.205 Proration of charges.**

A contract must include the exact formula agreed on for the proration of charges in the event that the Veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

**871.206 Other fees and charges.**

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the veteran is a chapter 31 participant, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with Part [813](#).

**871.207 Payment of tuition or fees.**

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as a registration fee, etc.

Part 871—Vocational Rehabilitation and Employment Programs

---

(d) The period for which payment of charges may be made is the period of actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

**871.208 Rehabilitation facilities.**

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. Chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

**871.209 Records and reports.**

Contracts, agreements, or arrangements must provide for the number and frequency of reports, adequate financial records to support payment for each trainee, and maintenance of attendance and progress records. Such records must be preserved for a period of three years.

**871.210 Prohibition on Advertising—Training of Veterans.**

The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training Veterans must not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under 38 U.S.C. Chapter 31 and must not be directed or pointed specifically to Veterans.

**871.211 Contract clauses.**

(a) Contracting officers must use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

- (1) [852.271-72](#) Time Spent by Counselee in Counseling Process.
- (2) [852.271-73](#) Use and Publication of Counseling Results.
- (3) [852.271-74](#) Inspection of Instruction, Counseling or Testing Operations.

(b) See [837.110-70\(a\)](#) for clause [852.237-74](#), Non-Discrimination in Service Delivery.

**SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS**

**PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES**

*(Revised 11/1/2021)*

**Sec.**

- 873.101 Policy.
- 873.102 Definitions.
- 873.103 Priority sources.
- 873.104 Competition requirements.
- 873.105 Acquisition planning.
- 873.106 Exchanges with industry before receipt of proposals.
- 873.107 Socioeconomic programs.
- 873.108 Publicizing contract actions.
- 873.109 General requirements for acquisition of health-care resources.
- 873.110 Solicitation provisions.
- 873.111 Acquisition strategies for health-care resources.
- 873.112 Evaluation information.
- 873.113 Exchanges with offerors.
- 873.114 Best value pool.
- 873.115 Proposal revisions.
- 873.116 Source selection decision.
- 873.117 Award to successful offeror.
- 873.118 Debriefings.

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

This page intentionally left blank.

**PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES****873.101 Policy.**

(a) *General.* In accordance with 38 U.S.C. 8153, to secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the Department of Veterans Affairs (VA) may make arrangements by contract for the mutual use, or exchange of use, of health-care resources between VA health-care facilities and any health-care provider, or other entity or individual. This part prescribes simplified procedures for contracts with entities not affiliated with VA under 38 U.S.C. 7302 to secure health-care resources that are a commercial service, or the use of medical equipment or space. VA may enter into such a contract if such resources are not, or would not be, used to their maximum effective capacity. (38 U.S.C. 8153)

(b) *Precedence.* The procedures in this part shall be used in conjunction with the Federal Acquisition Regulation ([FAR](#)) and other parts of the VA Acquisition Regulation ([VAAR](#)). However, when a policy or procedure in the FAR or another part of the VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. (38 U.S.C. 8153)

**873.102 Definitions.**

*Commercial service* means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

*Health-care providers* include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

*Health-care resource* includes hospital care and medical services (as those terms are defined in 38 U.S.C. 1701 and services under 38 U.S.C. 1782 and 1783) any other health-care service, and any health-care support or administrative resource. (38 U.S.C. 8153)

**873.103 Priority sources.**

Except for the acquisition of covered services available from the Committee for Purchase From People Who Are Blind or Severely Disabled and the AbilityOne Program (see [FAR subpart 8.7](#)), there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space in accordance with [808.002\(a\)\(2\)](#) and [873.107](#). (38 U.S.C. 8153)



**873.104 Competition requirements.**

(a) *Affiliated institutions.* (1) A health-care resource may be acquired on a sole source basis if a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the VA in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers. (38 U.S.C. 8153(a)(3)(A))

(2) Acquisitions of health-care resources identified in paragraph (a)(1) of this section are not required to be publicized as otherwise required by [873.108](#) or [FAR 5.101](#).

(b) *Non-affiliated entities.* (1) If the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a)(1) of this section, contracting officers shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation for the resource to be procured, and provide for the consideration by VA of bids, proposals, or quotations so submitted. (38 U.S.C. 8153(a)(3)(B))

(2) Acquisition of health-care resources identified in paragraph (b)(1) of this section shall be publicized as otherwise required by [873.108](#). Moreover, for any such acquisition described in paragraph (b)(1) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in [FAR 6.303](#). (38 U.S.C. 8153(a)(3)(D))

**873.105 Acquisition planning.**

(a) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher-level designee. At a minimum, the team must include the contracting officer and a representative of the Office of General Counsel and the requesting service. (38 U.S.C. 8153)

(b) The contracting officer or the acquisition team, as appropriate, must conduct market research, including satisfying the requirements of [808.002\(a\)\(2\)](#) and [873.107](#), Socioeconomic programs, and a VA Rule of Two determination ([819.502-2](#)). It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately

disseminated as set forth in [873.107](#). (38 U.S.C. 8153)

(c) In lieu of the requirements of [FAR part 7](#) addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in [FAR 7.105](#). Formal written minutes—summarizing decisions, actions, and conclusions—shall be prepared and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

### **873.106 Exchanges with industry before receipt of proposals.**

(a) Exchange of information among all interested parties involved in an acquisition described in [873.104\(b\)](#), from the earliest identification of a requirement through release of the solicitation, is encouraged. Any exchange of information must be consistent with procurement integrity requirements in [FAR 3.104](#). The nature and extent of exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research in accordance with [FAR 10.002\(b\)](#), which shall be followed to the extent that the provisions therein would provide relevant information;
- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft requests for proposals (RFPs);
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (e.g., Internet);
- (11) Use of the System for Award Management (SAM) (see <http://www.sam.gov/>); and

(12) Researching VA's Vendor Information Pages (VIP) database at <https://www.vip.vetbiz.va.gov/>.

### **873.107 Socioeconomic programs.**

(a) The Veterans First Contracting Program in VAAR subpart [819.70](#) takes precedence over other small business programs. (38 U.S.C. 8127-8128)

(b)(1) Except for contract actions subject to [808.002\(a\)\(2\)](#), competitive contract actions not otherwise excluded under this part shall be set-aside for VIP-listed service-disabled veteran-owned small business (SDVOSB) concerns or veteran-owned small business (VOSB) concerns if the contracting officer has a reasonable expectation that two or more eligible small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127-8128)

(2) The contracting officer shall proceed with the acquisition under the simplified procedures of this part considering priority sources (see [808.002\(a\)\(2\)](#) and [873.103](#)) and preferences for other small businesses in accordance with [819.203-70](#) and [819.7004](#). (38 U.S.C. 8153)

(c) Without regard to [FAR 13.003\(b\)\(1\)](#), [19.203](#), [19.502](#), the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(d) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by 38 U.S.C. 8127 and 8128, as implemented in VAAR subpart [819.70](#), the Veterans First Contracting Program. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small business concerns in accordance with FAR [19.203](#), [819.203-70](#) and [819.7004](#). (38 U.S.C. 8153)

### **873.108 Publicizing contract actions.**

(a) All competitive acquisitions under this part, except as provided in paragraph (b) of this section, for dollar amounts in excess of the SAT, shall be publicly announced utilizing a medium designed to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the

Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Notice shall be published for a reasonable time prior to issuance of a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the request for quotation (RFQ) or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions described in [873.104\(a\)](#). However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from an institution not affiliated with the VA in accordance with 38 U.S.C. 7302, if conducted on a sole source basis, must still be justified and publicized (see [873.104\(b\)\(2\)](#)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under the procedures in this part must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part. (38 U.S.C. 8153)

### **873.109 General requirements for acquisition of health-care resources.**

(a) *Source selection authority.* Unless the head of the contracting activity (HCA) appoints another individual to serve as the Source Selection Authority (SSA), the contracting officer shall be the SSA for acquisitions of health-care resources, consisting of commercial services, or the use of medical equipment or space, utilizing the guidance contained in this part. (38 U.S.C. 8153)

(b) *Performance work statement/statement of work.* The performance work statement (PWS) or statement of work (SOW) must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR [13.106-3\(b\)](#), [13.501\(b\)](#), or [15.406-3](#), the contract file must include—

- (1) A brief written description of the procedures used in awarding the contract;
- (2) A written determination that the health-care resources being procured are not otherwise feasibly available or that utilization of such health-care resources is necessary to meet mission requirements;
- (3) Documentation of market research and the results of such research;
- (4) The number of offers received; and
- (5) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.* (1) Without regard to [FAR 5.203](#), contracting officers shall set a reasonable time for receipt of quotations or proposals in the solicitations.

(2) Without regard to FAR [15.208](#) or [52.212-1\(f\)](#), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in [873.111\(d\)\(1\)\(ii\)](#) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government and a memorandum for the record is included in the solicitation file explaining the reasons for the cancellation. (38 U.S.C. 8153)

### **873.110 Solicitation provisions.**

(a) As required in [873.109\(d\)](#), contracting officers shall set a reasonable time for receipt of quotations or proposals and shall insert the provision at [852.273-70](#), Late Offers, in all RFQs and RFPs exceeding the micro-purchase threshold. However, this provision shall not be used if the provision [852.273-71](#), Alternative Negotiation Techniques, is to be used. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at [852.273-71](#), Alternative Negotiation

Techniques, when either of the alternative negotiation techniques described in [873.111\(d\)\(1\)](#) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at [852.273-72](#), Alternative Evaluation, in lieu of FAR provision [52.212-2](#), Evaluation—Commercial Items, when the alternative negotiation technique described in [873.111\(d\)\(1\)\(ii\)](#) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in [873.112](#), is to be used to select a contractor under a RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at [852.273-73](#), Evaluation—Health-Care Resources, in the RFQ or RFP in lieu of FAR provision [52.212-2](#). (38 U.S.C. 8153)

(e) As provided at [873.113\(f\)](#), if award may be made without exchange with offerors, the contracting officer shall include the provision at [852.273-74](#), Award Without Exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at [52.207-3](#), Right of First Refusal of Employment, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

### **873.111 Acquisition strategies for health-care resources.**

The following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations (RFQ)*. (1) Without regard to FAR subparts [6.1](#) or [6.2](#), contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made. (see [FAR 13.004](#))

(2) For acquisitions in excess of the SAT, the procedures set forth in [FAR part 13](#) concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding*. [FAR part 14](#) provides procedures for sealed bidding.

(c) *Multiphase acquisition technique--(1) General.* Without regard to [FAR 15.202](#), multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror. (38 U.S.C. 8153)

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see [873.108](#)) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph. (38 U.S.C. 8153)

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information). (38 U.S.C. 8153)

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision. (38 U.S.C. 8153)

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision. (38 U.S.C. 8153)

(6) *Debriefing.* Without regard to [FAR 15.505](#), contracting officers must debrief offerors whose proposals are not accepted under a competitive request for proposals (RFP) as required by [873.118](#). (38 U.S.C. 8153)

(d) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see [FAR 3.104](#)). (38 U.S.C. 8153)

### **873.112 Evaluation information.**

(a) Without regard to [FAR 15.304](#), Evaluation factors and significant subfactors (except for [15.304\(c\)\(1\)](#) and [\(c\)\(3\)](#), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)



**873.113 Exchanges with offerors.**

(a) Without regard to FAR [15.201](#) or [15.306](#), acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions are not applicable to acquisitions under this part. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see [873.114](#)). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, omissions, or deficiencies) in an Offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in [873.111\(d\)\(1\)](#), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts [3](#) and [24](#). (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

**873.114 Best value pool.**

(a) Without regard to [FAR 15.306\(c\)](#), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations are not applicable to acquisitions under this

part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

#### **873.115 Proposal revisions.**

(a) The contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard all proposals and revisions to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

#### **873.116 Source selection decision.**

(a) An integrated comparative assessment of proposals should be performed

before source selection is made. The SSA shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The SSA may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the SSA requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with [FAR 15.308](#). (38 U.S.C. 8153)

#### **873.117 Award to successful offeror.**

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

#### **873.118 Debriefings.**

Offerors whose proposals are not accepted under a competitive request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to [FAR 15.505](#), preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with [FAR 15.506](#). (38 U.S.C. 8153)