

Title 48: Federal Acquisition Regulations System

PART 802—DEFINITIONS OF WORDS AND TERMS

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 802.1—Definitions

802.101 Definitions.

A/E means architect/engineer.

Chief Acquisition Officer means the Assistant Secretary for Management.

COTR means Contracting Officer's Technical Representative or Contracting Officer's Representative.

D&S Committee means the VA Debarment and Suspension Committee, a committee consisting of the Director, Acquisition Resources Service (chair), and representatives of the Office of Management, Office of Inspector General, and the program office to which the particular debarment or suspension case relates. A representative from OGC will serve as legal counsel to the D & S Committee.

Debarring official means the DSPE, who is also the Associate Deputy Assistant Secretary for Acquisitions. Authority to impose debarment is delegated to the SPE and is further delegated to the DSPE.

DSPE means the Deputy Senior Procurement Executive, who is also the Associate Deputy Assistant Secretary for Acquisitions. The DSPE must be career member of the Senior Executive Service.

FAR means the Federal Acquisition Regulation.

GAO means the Government Accountability Office.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA's Appointment of HCAs Program (see 801.695).

OGC means the Office of the General Counsel.

Resident Engineer has the same meaning as contracting officer's technical representative or contracting officer's representative (see 852.270–1).

Service-Disabled Veteran-owned small business concern (SDVOSB) has the same meaning as defined in the Federal Acquisition Regulation (FAR) part 2.101, except for acquisitions authorized by 813.106 and subpart 819.70. These businesses must then be listed as verified on the Vendor Information Pages (VIP) database at <http://www.vetbiz.gov>. In addition, some businesses may be owned and controlled by a surviving spouse.

Small business concern has the same meaning as defined in FAR 2.101.

SPE means the Senior Procurement Executive who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. The SPE is responsible for the management direction of the VA acquisition system. The SPE may further delegate authority to the DSPE.

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; or

(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.

Suspending official means the DSPE. Authority to impose suspension is delegated to the SPE and is further delegated to the DSPE.

VA means the Department of Veterans Affairs.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

Vendor Information Pages (VIP) means the VetBiz.gov Vendor Information Pages database at <http://www.vetbiz.gov>.

Veteran-owned small business concern (VOSB) has the same meaning as defined in FAR 2.101, except for acquisitions authorized by 813.106 and 819.70. These businesses must then be listed as verified in the VetBiz.gov VIP database.

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.

[73 FR 2717, Jan. 15, 2008, as amended at 74 FR 64629, Dec. 8, 2009]

PART 804—ADMINISTRATIVE MATTERS

PART 804—ADMINISTRATIVE MATTERS
Subpart 804.1—Contract Execution

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

804.101 Contracting officer's signature.

(a) If a contracting officer's name and title has been typed, stamped, or printed on the contract, and that contracting officer is not available to sign the contract, another contracting officer, as specified in 801.602, may sign the contract.

(b) The contracting officer who signs the contract must have contracting authority to cover the contract to be signed and must annotate his or her name and title below his or her signature.

804.1102 Vendor Information Pages (VIP) Database.

Prior to January 1, 2012, all VOSBs and SDVOSBs must be listed in the VIP database, available at <http://www.VetBiz.gov>, and also must be registered in the Central Contractor Registration (CCR) (see 48 CFR subpart 4.11) to receive contract awards under VA's Veteran-owned Small Business prime contracting and subcontracting opportunities program. After December 31, 2011, all VOSBs, including SDVOSBs, must be listed as verified in the VIP database, and also must be registered in the CCR to be eligible to participate in order to receive new contract awards under this program.

[74 FR 64630, Dec. 8, 2009]

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

808.002 Priorities for use of Government supply sources.

(a) *Supplies.* (1) As used in FAR 8.002(a)(1)(i), the term “agency inventories” includes Supply Fund Stock and VA Excess.

(2) A national committed use contract awarded by the VA National Acquisition Center has a priority between wholesale supply sources (FAR 8.002(a)(1)(v)) and mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)).

(3) Federal Supply Schedule contracts awarded by the VA National Acquisition Center in Federal Supply Classification (FSC) Groups 65 and 66 shall be mandatory for use by VA and shall have the same order of priority as mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)). VA contracting officers must place orders against Federal Supply Schedules contracts awarded by the VA National Acquisition Center in FSC Groups 65 and 66 in the following descending order of priority:

(i) Nationally awarded Blanket Purchase Agreements (BPAs), issued by the VA National Acquisition Center against Federal Supply Schedules.

(ii) Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against Federal Supply Schedules.

(iii) Federal Supply Schedules without BPAs.

(4) Indefinite delivery indefinite quantity (IDIQ) contracts, awarded by VISN, regional, or local facility VA contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts shall have an order of priority between optional use Federal Supply Schedules (FAR 8.002(1)(a)(vii)) and commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)). VA contracting officers must place delivery orders against IDIQ contracts, awarded by VISN, regional, or a local facility contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts in the following descending order of priority:

(i) VISN or regionally awarded contracts.

(ii) Locally awarded contracts.

(5) Open market purchases (purchases not falling within any of the higher priorities in paragraphs (a)(2) through (4) of this section) have the same priority as commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)).

(b) *Unusual or compelling urgency.* The contracting officer may use a source lower in priority than as specified in paragraph (a) of this section when the need for supplies or services is of an unusual or compelling urgency (see FAR 6.302–2). The Contracting Officer must include a justification for each deviation in the procurement file.

(c) *Eligible Beneficiaries.* (1) A contracting officer may authorize an acquisition from the Veterans Canteen Service or a commercial source when a VA healthcare official (e.g., social worker, physician) determines that personal selection of shoes, clothing, and incidentals will result in a therapeutic benefit to an eligible beneficiary.

(2) The contracting officer must cite Federal Prison Industries, Inc., clearance No. 1206 in the purchase document for any purchase from a commercial source of dress shoes similar to Federal Prison Industries, Inc., Style No. 86–A.

Subpart 808.4—Federal Supply Schedules

808.402 General.

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

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

When placing an order or establishing a BPA for supplies or services requiring a statement of work, the ordering activity, when developing the statement of work and any evaluation criteria in addition to price, shall adhere to and apply the evaluation factor commitments at 815.304–70.

[74 FR 64630, Dec. 8, 2009]

Subpart 808.6—Acquisition From Federal Prison Industries, Inc. (FPI)

808.603 Purchase priorities.

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

[74 FR 64630, Dec. 8, 2009]

Subpart 808.8—Acquisition of Printing and Related Supplies

808.802 Policy.

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

PART 809—CONTRACTOR QUALIFICATIONS

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 809.1—Responsible Prospective Contractors

809.104 Standards.

809.104-2 Special standards.

(a) For a pre-award survey prescribed by 809.106–1, a contracting officer must develop special standards of sanitation applicable to the acquisition of subsistence and services prescribed by 809.106–1(a).

(b) An appropriate specialist will assist the contracting officer in developing the special standards under paragraph (a) of this section.

809.106 Pre-award surveys.

809.106-1 Conditions for pre-award surveys.

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

(1) Bakeries.

(2) Dairies.

(3) Ice cream plants.

(4) Laundry and dry cleaning activities.

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

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

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

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

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

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

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

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

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

Subpart 809.2—Qualifications Requirements

809.201 Definitions.

For the purposes of this subpart:

VA QPL means a VA Qualified Products List, a list of products qualified by the VA under VA specifications, or purchase descriptions, or commercial item descriptions.

VISN QPL means a VISN Qualified Products List, a list of products qualified by a VISN under VA specifications, or purchase descriptions, or commercial item descriptions.

809.202 Policy.

The HCA may sign a justification required by FAR 9.202(a)(1).

809.204 Responsibilities for establishment of a qualification requirement.

(a) Under FAR Subpart 9.2, VA may create VA QPLs for use on individual solicitations or on multiple solicitations issued by one or more VA facilities.

(b) An HCA or designee must support the creation of a VA QPL using one or more of the following justifications:

(1) The time required for testing the product after award would unduly delay product delivery.

(2) The cost of repetitive product testing would be excessive.

(3) Testing the product would require purchasing an expensive or complicated apparatus not commonly available.

(4) It is in the Government's interest to be assured before contract award that the product is satisfactory for its intended use.

(5) Determining acceptability would require providing product performance data to supplement technical requirements in the specification.

(6) Conducting a test would result in substantial or repetitive rejections.

(7) VA cannot economically develop clear, professional specifications for the product performance, balance, design, or construction, and professional judgment is required to determine whether the product is acceptable under VA requirements.

(c) If VA plans to establish a VA QPL for any given product, the contracting officer may limit known suppliers to suppliers whose products are covered by a Federal Supply Schedule contract, as provided at FAR Subpart 8.4.

(d) VA will pay the costs to inspect and test a product sample submitted under this section.

- (1) The product supplier must pay for the sample and its transportation to the place of inspecting and testing.
- (2) After inspection and testing, VA will return any product sample to the supplier “as is” unless:
 - (i) The inspection or test destroys the sample; or
 - (ii) The supplier authorizes VA to retain or dispose of the sample.
- (e) Once VA accepts a product for the VA QPL, VA may review the product for compliance with the applicable specification at any time.
 - (1) Where there is a variance between a VA specification that was the basis for the VA QPL and the product furnished by the supplier, the supplier must furnish an item that conforms to the VA specification.
 - (2) If the supplier fails to or is unable to provide a product that conforms to the applicable VA specification, the product will be removed from the VA QPL.
- (f) VA's acceptance of a product for listing on the VA QPL does not:
 - (1) Guarantee that VA will accept the product in any future purchase; or
 - (2) Constitute a waiver of the specifications as to acceptance, inspection, testing, or other provisions of any future contract involving the product.

809.206 Acquisitions subject to qualification requirements.

809.206-1 General.

The HCA may determine that an emergency exists, as provided in FAR 9.206–1(b).

809.270 Qualified products for convenience/labor-saving foods.

- (a) Each VISN Nutrition and Food Service representative is authorized to establish a common VISN QPL for convenience and labor-saving foods for use at medical facilities within the representative's VISN.
 - (1) The VISN Nutrition and Food Service representative must notify the Director, Nutrition and Food Service, VA Central Office, of the establishment or amendment of any VISN QPL.
 - (2) To avoid unnecessary duplication within a VISN, for medical facilities using an applicable VISN QPL under paragraph (b) of this section, the VISN Nutrition and Food Service representative must coordinate and consolidate test results and recommendations.
- (b) Each medical facility may:
 - (1) Use its VISN QPL; and
 - (2) Test food of its choice, provided that the facility submits test results to the VISN Nutrition and Food Service representative.
- (c) The VISN representative must provide a copy of each approved VISN QPL to the following:

- (1) Each contracting office in the VISN.
- (2) The Director, Nutrition and Food Service, VA Central Office.
- (3) Upon request, the Office of Acquisition and Materiel Management, VA Central Office.

Subpart 809.4—Debarment, Suspension, and Ineligibility

809.400 Scope of subpart.

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

809.402 Policy.

(a) When VA receives information that another agency is pursuing a debarment or suspension identical to a VA action against the same contractor, the Debarment and Suspension (D&S) Committee will coordinate prospective action with the appropriate official of the other agency to establish a lead agency.

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

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

809.404 Excluded Parties List System.

Acquisition Resources Service, Office of Acquisition and Materiel Management, is responsible for the actions described in FAR 9.404(c).

809.405 Effect of listing.

The authority under FAR 9.405(a), 9.405(d)(2), and 9.405(d)(3) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors whose names appear on the Excluded Parties List System is delegated to the SPE and is further delegated to the DSPE.

809.405-1 Continuation of current contracts.

Authority to make the determinations under FAR 9.405–1 is delegated to the SPE and is further delegated to the DSPE.

809.405-2 Restrictions on subcontracting.

When a subcontract is subject to Government consent, authority to make the written determination required under FAR 9.405–2 consenting to a contractor's use of a subcontractor who is debarred, suspended, or proposed for debarment is delegated to the SPE and is further delegated to the DSPE.

809.406 Debarment.

809.406-1 General.

(a) As provided in FAR 9.406–1(c), authority to determine whether to continue business dealings between VA and a contractor debarred or proposed for debarment is delegated to the SPE and is further delegated to the DSPE.

(b) For the purposes of FAR 9.406–1, the DSPE is the debarring official under the Federal Management Regulation at 41 CFR 102–117.295.

(c) Additional factors that a debarring official should consider before arriving at a debarment decision include the following:

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

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

(3) Whether the contractor conducted internal and external audits as appropriate.

(4) Whether the contractor timely reported to appropriate Government officials any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts.

809.406-2 Cause for debarment.

(a) Misrepresentation of VOSB or SDVOSB eligibility may result in action taken by VA officials to debar the business concern for a period not to exceed 5 years from contracting with VA as a prime contractor or a subcontractor.

(b) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under subpart 819.70 may result in action taken by VA officials to debar any Service-Disabled Veteran-owned, Veteran-owned small business concern or any large business concern involved in such action.

[74 FR 64630, Dec. 8, 2009]

809.406-3 Procedures.

(a) Any individual may submit a recommendation to debar a contractor to the DSPE. The recommendation to debar must be supported with evidence of a cause for debarment listed in FAR 9.406–2. When the DSPE receives a recommendation for debarment, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the recommendation to debar is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for debarment, as listed in FAR 9.406–2, with or without a recommendation, it will conduct a fact-finding and present facts to the debarring official.

(c) If the debarring official finds a basis for proposing a contractor for debarment, the D&S Committee will prepare a notice of proposed debarment under FAR 9.406–3(c) for the signature of the debarring official. The signed notice of proposed debarment will be sent to the last known address of the contractor, the contractor's

counsel, or agent for service of process, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of proposed debarment to the General Services Administration Excluded Parties List System pending a debarment decision.

(d) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D&S Committee will prepare a recommendation and refer the case to the debarring official for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D&S Committee must consider the information in the reply before the D&S Committee makes its recommendation to the debarring official.

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

(g) If the D&S Committee finds that the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, then the D&S Committee shall submit to the debarring official the information establishing the dispute of material facts. If the debarring official agrees that there is a genuine dispute of material facts, the debarring official shall refer the dispute to a designee for resolution pursuant to 809.470.

(h) If there are no disputes over material facts, the debarment action is based on a conviction or civil judgment, or all disputes over material facts have been resolved pursuant to 809.470, the debarring official will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D&S Committee by the contractor. The D&S Committee must update the status of the action on the General Services Administration Excluded Parties List System.

809.406-4 Period of debarment.

(a) Except in an unusual circumstance, the period of debarment will not exceed 3 years. The debarring official will base the period of debarment on the circumstances surrounding the cause for debarment.

(b) The DSPE may remove a debarment, amend its scope, or reduce the period of debarment based on a D&S Committee recommendation if:

(1) VA has debarred the contractor;

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

809.407 Suspension.

809.407-1 General.

(a) As provided in FAR 9.407–1(d), authority to determine whether to continue business dealings between VA and a suspended contractor is delegated to the SPE and is further delegated to the DSPE.

(b) For the purposes of FAR 9.407–1, the DSPE is the suspending official under the Federal Management Regulation at 41 CFR 102–117.295.

809.407-3 Procedures.

(a) Any individual may submit a recommendation to suspend a contractor to the DSPE. The recommendation to suspend must be supported with evidence of a cause for suspension listed in FAR 9.407–2. When the DSPE receives a recommendation for suspension, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the recommendation to suspend is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for suspension, as listed in FAR 9.407–2, with or without a recommendation, it will conduct a fact-finding and present facts and recommendations to the suspending official.

(c) If the suspending official finds a basis for suspending a contractor, the D&S Committee will prepare a notice of suspension under FAR 9.407–3(c) for the signature of the suspending official. The signed notice of suspension will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice of suspension to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of suspension to the General Services Administration Excluded Parties List System pending completion of investigation and any ensuing legal proceedings.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice of suspension, the D&S Committee must consider the information in the reply before the Committee makes further recommendations to the suspending official. The D&S Committee, upon the request of a suspended contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the proceeding for the suspending official.

(e) In actions not based on an indictment, if the D&S Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the D&S Committee shall submit to the suspending official the information establishing the dispute of material facts. However, the D&S Committee must first coordinate any further proceeding regarding the facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA will take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

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

809.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of fact pursuant to 809.406–3 and 809.407–3 of this chapter. The DSPE shall appoint a designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The hearings shall be conducted in Washington, DC. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the debarring or suspending official. The fact-finder will establish the date for the fact-finding hearing, normally to be held within 45 working days of the submission of the dispute.

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

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

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

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence. As required by FAR 9.406–3(d)(2)(i) and 9.407–3(d)(2)(i), written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the debarring or suspending official, the Government's representative, and the contractor.

Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.503 Waiver.

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

809.504 Contracting officer responsibilities.

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

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

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

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

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

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

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

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

809.507 Solicitation provisions and contract clause.

809.507-1 Solicitation provisions.

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

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

PART 810—MARKET RESEARCH

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

Source: 74 FR 64630, Dec. 8, 2009, unless otherwise noted.

810.001 Market research policy.

When conducting market research, VA contracting teams shall use the VIP database, at <http://www.VetBiz.gov>, in addition to other sources of information.

810.002 Market research procedures.

Contracting officers shall record VIP queries in the solicitation file by printing the results of the search(s) along with specific query used to generate the search(s).

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 813.1—Procedures

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

(a) Contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount exceeds the micro-purchase threshold up to \$5 million.

(b) Requirements exceeding \$25,000 must be synopsisized in accordance with FAR Part 5.

[74 FR 64630, Dec. 8, 2009]

813.106-3 Award and documentation.

The contracting officer may record a quotation on an Abstract of Offers (SF 1409 or 1419), the purchase request if space permits, or other supplemental sheet or form, such as VA Form 10–2237b, Request for Dietetic Supplies.

813.106-70 Oral purchase orders.

When advantageous to VA, the contracting officer may use an oral purchase order for transactions not in excess of \$3,000. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against Federal Supply Schedule contracts. The contracting officer must assign a purchase order number to the transaction. A copy of any electronically generated purchase order may be used as a property voucher and receiving report to document receipt.

Subpart 813.2—Actions at or Below the Micro-Purchase Threshold

813.202 Purchase guidelines.

Open market micro-purchases shall be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable.

[74 FR 64630, Dec. 8, 2009]

Subpart 813.3—Simplified Acquisition Methods

813.302 Purchase orders.

813.302-5 Clauses.

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

813.307 Forms.

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

(1) VA Form 90–2138, Order for Supplies or Services.

(2) VA Form 90–2139, Order for Supplies or Services (Continuation).

(3) VA Form 90–2138–ADP, Purchase Order for Supplies or Services.

(4) VA Form 2139–ADP, Order for Supplies and Services (Continuation).

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

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

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

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

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

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

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

(f) The contracting officer must use VA Form 10–2421, Prosthetics Authorization for Items or Services, for indicated services not in excess of \$300.

PART 815—CONTRACTING BY NEGOTIATION

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 815.3—Source Selection

815.303 Responsibilities.

The authority of the Secretary to appoint an individual other than the contracting officer to serve as the source selection authority for a particular acquisition or group of acquisitions is delegated to the SPE and is further delegated to the DSPE. If an HCA wishes to designate an individual other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the HCA shall prepare a request and justification and shall submit the request through channels to the DSPE for approval.

815.304 Evaluation factors and significant subfactors.

(a) In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors providing additional consideration to such offerors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

[74 FR 64631, Dec. 8, 2009]

815.304-70 Evaluation factor commitments.

(a) VA contracting officers shall:

(1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(2) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in selecting offers for award;

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

(4) Use participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with 852.215–70, Service-Disabled Veteran-owned and Veteran-owned small business Evaluation Factors, the contracting officer shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

[74 FR 64631, Dec. 8, 2009]

815.304-71 Solicitation provision and clause.

(a) The contracting officer shall insert the provision at 852.215–70, Service-Disabled Veteran-owned and Veteran-owned small business Evaluation Factors, in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215–71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR clause 852.215–70, Service-Disabled Veteran-owned and Veteran-owned small business Evaluation Factors.

[74 FR 64631, Dec. 8, 2009]

Subpart 815.4—Contract Pricing

815.404 Proposal analysis.

815.404-1 Proposal analysis techniques.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See 801.602–70.)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum, the items set forth in FAR 15.404–1(e)(2).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre-award audit.

815.404-2 Information to support proposal analysis.

In evaluating start-up and other non-recurring costs, the contracting officer must determine the extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future noncompetitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

Subpart 815.6—Unsolicited Proposals

815.604 Department points of contact.

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposal or inquiries to the following:

(a) Facility level unsolicited proposals must be referred to the HCA for the field facility.

(b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.

(c) Proposals to VA Central Office must be referred to the Director, Acquisition Operations Service (049A3).

815.606 Department procedures.

(a) The VA contact point will do the following:

(1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.

(2) In consultation with such technical/professional offices, the VA contact point will furnish the potential offeror the information specified in FAR 15.604 and any other information that might be of assistance to the potential offeror.

(b) The contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

(c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.605. If required information is not submitted, the contact point will:

(1) Determine if FAR 15.604 requires advance guidance;

(2) Determine whether a comprehensive evaluation prescribed by FAR 15.606–2 is appropriate and, if so, request that the offeror provide the necessary information; and,

(3) Establish an estimated due date for completion of the review process.

815.606-1 Receipt and initial review.

(a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e., the proposal complies with the requirements in FAR 15.606–1(a) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with FAR 15.609 has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

(1) The date the proposal was received.

(2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.

(3) A description of the proposal.

(4) The offices requested to evaluate the proposal and the date the offices are requested to return their evaluations.

(5) The date the reviewing offices finalize their respective evaluations.

(6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in FAR 15.607(a)(1) through (4). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE (049A5) before the contact point, if warranted as a contracting officer, or an appropriate contracting officer begins negotiation on proposals. The contact point must provide the DSPE (049A5) all necessary documentation supporting the noncompetitive negotiation, including any justification and approval required by FAR Subpart 6.3 and the results of any synopsis required by FAR Subpart 5.2. The DSPE (049A5) will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.

PART 817—SPECIAL CONTRACTING METHODS

Authority: 38 U.S.C. 8127.

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 817.1—Multi-year Contracting

817.105 Policy.

817.105-1 Uses.

(a) Under 38 U.S.C. 114, VA contracting officers may enter into multi-year contracts for supplies and services not to exceed 5 years (unless otherwise authorized by statute), provided the Secretary or designee makes the following determinations:

(1) Appropriations are available for obligation to pay for the total payments for the fiscal year in which the contract is awarded plus the estimated amount of any cancellation charges.

(2) The contract serves the best interest of the Government by:

(i) Reducing cost;

(ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance; and

(iv) Encouraging effective competition.

(3) That, during the contract period:

(i) Demand for the supplies or services will continue;

(ii) Substantial changes in demand for supplies and services in terms of quantity or rate of delivery are unlikely; and

(iii) Specifications for the supplies or services will remain reasonably stable.

(4) The risk of the contractor's inability to perform under the terms and conditions of the contract is low.

(5) A multi-year contract will not inhibit competition from small businesses.

(6) For a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, that there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b) The Secretary has delegated authority to make the determinations specified in 817.105–1(a) as follows:

(1) HCAs may make the above determinations and approve contracts that do not require legal/technical reviews under 801.602–70 and that do not contain a first year cancellation ceiling exceeding 20 percent of the contract value over the full multi-year term.

(2) Authority to make the above determinations and to approve all other proposed multi-year contracts is delegated to the SPE and is further delegated to the DSPE. For approval purposes, the HCA will justify and document the use of a multi-year contract against each of the criteria specified in paragraphs (a)(1) through (a)(6) of this section and forward to the DSPE for approval. The justification must explain the cancellation ceiling and the method used to calculate that ceiling. The justification also must explain the advantages of multi-year contracts over other alternative methods, e.g., option year contracts.

(c) The contracting officer must develop the cancellation ceilings in accordance with FAR 17.106–1. (38 U.S.C. 114)

Subpart 817.2—Options

817.202 Use of options.

All solicitations developed under Office of Management and Budget Circular A–76 (Revised) cost comparisons will provide for four one-year renewal options as prescribed in FAR Subpart 17.2. The contracting officer must forward requests to use less or more than the prescribed contract period for Circular A–76 (Revised) cost comparisons to the DSPE for approval.

817.204 Contracts.

(a) The contracting officer must obtain the approval of the DSPE before awarding a contract that includes options exceeding the 5-year limitation specified in FAR 17.204(e). This requirement does not apply to contracts to be awarded by or on behalf of the VA Office of the Inspector General. The request for approval must include the following:

(1) Supporting documentation, rationale, and justifications for the use of options (see FAR 17.205) and for exceeding the 5-year limitation.

(2) Documentation that the contracting officer has considered and addressed the limitations specified in FAR 17.202(b) and (c).

(b) Solicitations that require technical review in accordance with 801.602–71 through 801.602–73 shall be submitted for review concurrently as provided therein.

Subpart 817.4—Leader Company Contracting

817.402 Limitations.

(a) Except as provided in paragraph (b) of this section, the Government shall not initiate or execute leader company contracts.

(b) The DSPE may designate a contracting officer to enter into a leader company contract for the benefit of VA and the Government. The DSPE must designate a contracting officer by name for a specific contract. The named contracting officer will submit the proposed contract, with a determination and finding, for legal review in accordance with 801.602–75.

Subpart 817.5—Interagency Acquisitions Under the Economy Act

817.502 General.

(a) After December 31, 2008, any contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods and services, shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, as implemented by the VA Acquisition Regulation, in acquiring such goods or services.

(b) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 *et seq.*).

[74 FR 64631, Dec. 8, 2009]

PART 819—SMALL BUSINESS PROGRAMS

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

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 819.2—Policies

819.201 General policy.

The Secretary shall establish goals for each fiscal year for participation in Department contracts by SDVOSBs and VOSBs. In order to establish contracting priority for Veteran-owned and controlled small businesses in accordance with 38 U.S.C. 8128, the Secretary may decrease other status-specific small business goals set forth by section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) upon consultation with the Administrator of the U.S. Small Business Administration (SBA).

[74 FR 64631, Dec. 8, 2009]

819.202 Specific policies.

819.202-1 Encouraging small business participation in acquisitions.

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

819.202-5 Data collection and reporting requirements.

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

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

(c) A Procurement Preference Program Goals Report (Report Control Symbol 00-0427) shall be submitted annually by each acquisition activity to reach OSDDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal. Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with the Small Business Administration (SBA).

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

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

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

819.202-70 HCA responsibilities.

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

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

(b) Promote goals for the small business programs set forth in FAR Part 19. This must also include Veteran-owned and Service-Disabled Veteran-owned small business concerns.

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

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

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

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

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

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

819.202-71 Additional contracting officer responsibilities.

In addition to the duties designated in FAR 19.202 through 19.202–6, contracting officers must perform the following functions in support of the small business program:

- (a) Make maximum use of small business source lists.
- (b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.
- (c) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent possible.
- (d) Assist and counsel small business firms with individual problems.
- (e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.
- (f) Submit informational copies of all small business protests and appeals to the Director, OSBDU, at the same time they are submitted to the SBA.

819.202-72 Order of precedence. [Reserved]

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

819.307 SDVOSB/VOSB small business status protests.

(a) All protests relating to whether an eligible VOSB or SDVOSB is a “small” business for the purposes of any Federal program are subject to 13 CFR part 121 and must be filed in accordance with that part. For acquisitions under the authority of subpart 819.70, upon execution of an interagency agreement between VA and the SBA pursuant to the Economy Act (31 U.S.C. 1535), regarding Service-Disabled Veteran-owned or Veteran-owned small business status, contracting officers shall forward all status protests to the Director, Office of Government Contracting (D/GC), U.S. Small Business Administration (ATTN: VAAR Part 819 SDVOSB/VOSB Small Business Status Protests), 409 3rd Street, SW., Washington, DC 20416, for disposition. Except for ownership and control issues to be determined in accordance with 38 CFR part 74, protests shall follow the procedures set forth in FAR 19.307 for both Service-Disabled Veteran-owned and Veteran-owned small business status. However, contracting officers shall be solely responsible for determining VOSB and SDVOSB compliance with VAAR 804.1102.

(b) If SBA sustains a Service-Disabled Veteran-owned or Veteran-owned small business status protest and the contract has already been awarded, then the contracting officer cannot count the award as an award to a VOSB or SDVOSB and the concern cannot submit another offer as a VOSB or SDVOSB on a future VOSB or SDVOSB procurement under this part, as applicable, unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.

(c) Until execution of the interagency agreement referenced in subsection (a), for acquisitions under the authority of subpart 819.70, the Executive Director, VA Office of Small and Disadvantaged Business Utilization (OSDBU) shall decide all protests on Service-Disabled Veteran-owned or Veteran-owned small business status whether raised by the contracting officer or an offeror. Ownership and control shall be determined in accordance with 38 CFR part 74. The Executive Director's decision shall be final.

(1) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a Service-Disabled Veteran-owned or Veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. An

offeror must deliver their protest in person, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer.

(2) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(3) If the Executive Director sustains a Service-Disabled Veteran-owned or Veteran-owned small business status protest and the contract has already been awarded, then the contracting officer cannot count the award as an award to a VOSB or SDVOSB and the concern cannot submit another offer as a VOSB or SDVOSB on a future VOSB or SDVOSB procurement under this part, as applicable, unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.

[74 FR 64631, Dec. 8, 2009]

Subpart 819.5—Set-Asides for Small Business

819.502 Setting aside acquisitions.

819.502-2 Total small business set-asides.

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

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

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

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

819.502-3 Partial set-asides.

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

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

Subpart 819.6—Certificates of Competency and Determinations of Responsibility

819.602 Procedures.

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

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

Subpart 819.7—The Small Business Subcontracting Program

Source: 74 FR 64632, Dec. 8, 2009, unless otherwise noted.

819.704 Subcontracting plan requirements.

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

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

(c) VA's OSDDBU shall review all prime contractor's subcontracting plan achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) of this section, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in 804.1102.

819.705 Appeal of Contracting Officer decisions.

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

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

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

819.709 Contract clause.

The contracting officer shall insert VAAR clause 852.219–9, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include FAR clause 52.219–9, Small Business Subcontracting Plan.

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

819.800 General.

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

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

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

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

Source: 74 FR 64632, Dec. 8, 2009, unless otherwise noted.

819.7001 General.

(a) Sections 502 and 503 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127–8128), created an acquisition program for small business concerns owned and controlled by Service-Disabled Veterans and those owned and controlled by Veterans for VA.

(b) The purpose of the program is to provide contracting assistance to SDVOSBs and VOSBs.

819.7002 Applicability.

This subpart applies to VA contracting activities and to its prime contractors. Also, this subpart applies to any government entity that has a contract, memorandum of understanding, agreement, or other arrangement with VA to acquire goods and services for VA in accordance with 817.502.

819.7003 Eligibility.

(a) Eligibility of SDVOSBs and VOSBs continues to be governed by the Small Business Administration regulations, 13 CFR subparts 125.8 through 125.13, as well as the FAR, except where expressly directed otherwise by the VAAR, and 38 CFR verification regulations for SDVOSBs and VOSBs.

(b) At the time of submission of offer, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB concern or VOSB concern;

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

(3) Verified for eligibility in the VIP database.

(c) A joint venture may be considered an SDVOSB or VOSB concern if

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

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the size standard explanation of affiliates in FAR 19.101; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), modified to include Veteran-owned small businesses where this CFR section refers to SDVOSB concerns.

(d) Any SDVOSB or VOSB concern (nonmanufacturer) must meet the requirements in FAR 19.102(f) to receive a benefit under this program.

819.7004 Contracting Order of Priority.

In determining the acquisition strategy applicable to an acquisition, the contracting officer shall consider, in the following order of priority, contracting preferences that ensure contracts will be awarded:

(a) To SDVOSBs;

(b) To VOSB, including but not limited to SDVOSBs;

(c) Pursuant to—

(1) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(2) The Historically-Underutilized Business Zone (HUBZone) Program (15 U.S.C. 657a); and

(d) Pursuant to any other small business contracting preference.

819.7005 Service-Disabled Veteran-owned small business set-aside procedures.

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

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

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

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

(1) Eligibility is extended to businesses owned and operated by surviving spouses; and

(2) Businesses are registered and verified as eligible in the VIP database prior to making an award.

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible SDVOSB concern in response to a SDVOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, if appropriate.

819.7006 Veteran-owned small business set-aside procedures.

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

(1) Offers will be received from two or more eligible VOSB concerns; and

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

(b) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VOSB concern in response to a VOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible VOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs, as appropriate.

(c) When conducting VOSB set-asides, the contracting officer shall ensure the business is registered and verified as eligible in the VIP database prior to making an award.

819.7007 Sole source awards to Service-Disabled Veteran-owned small business concerns.

(a) A contracting officer may award contracts to SDVOSB concerns on a sole source basis provided:

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

(2) The requirement is synopsisized in accordance with FAR part 5;

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

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

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one SDVOSB concern is available to meet the requirement is not required.

(c) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the VIP database prior to making an award.

819.7008 Sole source awards to Veteran-owned small business concerns.

(a) A contracting officer may award contracts to VOSB concerns on a sole source basis provided:

- (1) The anticipated award price of the contract (including options) will not exceed \$5 million;
- (2) The requirement is synopsisized in accordance with FAR part 5;
- (3) The VOSB concern has been determined to be a responsible contractor with respect to performance;
- (4) Award can be made at a fair and reasonable price; and
- (5) No responsible SDVOSB concern has been identified.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one VOSB concern is available to meet the requirement is not required.

(c) When conducting a VOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the VIP database prior to making an award.

819.7009 Contract clauses.

The contracting officer shall insert VAAR clause 852.219–10, Notice of Total Service-Disabled Veteran-owned small business Set-Aside or 852.219–11, Notice of Total Veteran-owned small business Set-Aside in solicitations and contracts for acquisitions under this subpart.

Subpart 819.71—VA Mentor-Protégé Program

Source: 74 FR 64633, Dec. 8, 2009, unless otherwise noted.

819.7101 Purpose.

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

819.7102 Definitions.

(a) A **Mentor** is a contractor that elects to promote and develop SDVOSBs and/or VOSBs by providing developmental assistance designed to enhance the business success of the protégé. A mentor may be a large or small business concern.

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

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

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

819.7103 Non-affiliation.

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

819.7104 General policy.

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

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

819.7105 Incentives for prime contractor participation.

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

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

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

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

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under FAR 15.305(a)(2)(v) and determining contractor responsibility 19.705-5(a)(1).

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

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

819.7106 Eligibility of Mentor and Protégé firms.

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

(a) *Eligibility. A Mentor:*

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

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

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

(b) *Eligibility. A Protégé:*

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

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

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to VA's Program should maintain a system for preparing separate reports of mentoring activity so that results of VA's Program can be reported separately from any other agency program.

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

819.7107 Selection of Protégé firms.

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

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

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

819.7108 Application process.

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

(b) The Mentor-Protégé Agreement must contain:

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

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

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

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

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

(6) A schedule with milestones for providing assistance;

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

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

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

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

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

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

(13) Signatures and date(s).

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

819.7109 VA review of application.

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

(b) After OSDBU completes its review and provides written approval, the mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will post a copy of the Mentor-Protégé Agreements to a VA Web site to be accessible to VA contracting officers for review for any VA contracts affected by the Agreement.

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

819.7110 Developmental assistance.

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

(a) Guidance relating to—

(1) Financial management;

(2) Organizational management;

(3) Overall business management/planning;

(4) Business development; and

(5) Technical assistance.

(b) Loans.

(c) Rent-free use of facilities and/or equipment.

(d) Property.

(e) Temporary assignment of personnel to a Protégé for training.

(f) Any other types of permissible, mutually beneficial assistance.

819.7111 Obligations under the Mentor-Protégé Program.

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

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

819.7112 Internal controls.

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

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

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

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

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

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

819.7113 Reports.

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

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

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

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

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

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

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

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

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

819.7114 Measurement of program success.

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

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

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

819.7115 Solicitation provisions.

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

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

PART 828—BONDS AND INSURANCE

Authority: 38 U.S.C. 501, 8127, 8128 and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 828.1—Bonds and Other Financial Protections

828.101 Bid guarantees.

828.101-2 Solicitation provision or contract clause.

When a bid bond is required for supplies or services, the phrase “any cost of acquiring the work” in paragraph (e) of the Bid Guarantee clause in FAR 52.228–1 may be modified to refer to the cost of “supplies,” “services,” etc.

828.101-70 Safekeeping and return of bid guarantee.

(a) The contracting officer must retain, in a safe, certified checks or other negotiable security provided as bid security for the three lowest acceptable bids. After the contract and contract bonds have been signed and approved, the contracting officer must return the certified checks or other negotiable securities either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that will provide evidence that the bidder received the security.

(b) The contracting officer should promptly return certified checks or other negotiable security furnished in support of bids, other than those determined to be the three lowest acceptable bids, to the respective bidders either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that will provide evidence that the bidder received the security.

(c) The contracting officer will not return commercial bid bonds unless specifically requested to do so by the bidders. If any of the three low bidders request the return of a commercial bid bond, the contracting officer will not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

828.106 Administration.

828.106-6 Furnishing information.

The contracting officer for the applicable contract will furnish copies of payment bonds to a requestor under the provisions of FAR 28.106-6(c).

828.106-70 Bond premium adjustment.

When performance and payment bonds or payment protection are required, the contract must contain the clause in 852.228-70, Bond premium adjustment.

828.106-71 Assisting Service-Disabled Veteran-owned and Veteran-owned small businesses in obtaining bonding.

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

[74 FR 64636, Dec. 8, 2009]

828.106-72 Contract provision.

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

[74 FR 64636, Dec. 8, 2009]

Subpart 828.2—Sureties and Other Security for Bonds

828.203 Acceptability of individual sureties.

828.203-7 Exclusion of individual sureties.

The DSPE may make the determinations referenced in FAR 28.203–7:

- (a) To exclude individuals from acting as surety on bonds; and
- (b) To accept bonds from individuals named on the Excluded Parties List System.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, must contain the provision in 852.228–71, Indemnification and insurance.

(b) Paragraph (a) of this section does not apply to emergency or sporadic ambulance service authorized by VA Manual MP–1, Part II, Chapter 3, or other emergency or sporadic vehicle or aircraft services if both of the following conditions exist:

- (1) The service is not used solely for the purpose of avoiding entering into a continuing contract.
- (2) The services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

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

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

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

828.7101 Approval for indemnification.

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) Contracting officers must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. (38 U.S.C. 7317)

828.7102 Extent of indemnification.

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

- (1) The contract work involves a risk of an unusually hazardous nature.
- (2) The losses or liability arise out of the direct performance of the contract.
- (3) The losses or liability are not covered by the financial protection required under 828.7103.

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

- (1) Employed at the site of the contract work; and
- (2) Working on the contract for which indemnification is granted.

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

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

- (1) The contractor must notify the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and
- (2) The Government may choose to control or assist in the defense of any suit or claim for which indemnification is provided in the contract. (38 U.S.C. 7317)

828.7103 Financial protection.

(a) A contractor must have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the contractor's property that meets one of the following:

- (1) The maximum amount of insurance available from private sources.
- (2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(b) Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination that provides the maximum amount required. If a contractor elects to self-insure, the contractor must provide the contracting officer, before award, proof of financial responsibility up to the maximum amount required. (38 U.S.C. 7317)

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 38 U.S.C. 501, 8127, 8128, and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

Source: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 852.1—Instructions for Using Provisions and Clauses

852.101 Using part 852.

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

852.102 Incorporating provisions and clauses.

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

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

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

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

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

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

Subpart 852.2—Texts of Provisions and Clauses

852.203-70 Commercial advertising.

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

Commercial Advertising (JAN 2008)

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

(End of clause)

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

As prescribed in 803.7001, insert the following clause:

Display of Department of Veterans Affairs Hotline Poster (DEC 1992)

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

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

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

(End of clause)

852.207-70 Report of employment under commercial activities.

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

Report of Employment Under Commercial Activities (JAN 2008)

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

(b) *Definitions.* (1) *Adversely affected Federal personnel* means:

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

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

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

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

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

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

(d) *Contracting reporting requirements.* (1) No later than 5 working days after contract award, the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits, and

(ii) Sufficient job application forms for adversely affected Federal personnel.

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

(i) The names of adversely affected Federal personnel offered an employment opening;

(ii) The date the offer was made;

(iii) A brief description of the position;

(iv) The date of acceptance of the offer and the effective date of employment;

(v) The date of rejection of the offer, if applicable, and the salary and benefits contained in the rejected offer; and

(vi) The names of any adversely affected Federal personnel who applied but were not offered employment and the reason(s) for withholding an offer.

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

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

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

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

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

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

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

(End of clause)

852.209-70 Organizational conflicts of interest.

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

Organizational Conflicts of Interest (JAN 2008)

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

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

(c) Based on this information and any other information solicited or obtained by the contracting officer, the contracting officer may determine that an organizational conflict of interest exists which would warrant disqualifying the contractor for award of the contract unless the organizational conflict of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the contracting officer finds that it is in the best

interest of the United States to award the contract, the contracting officer shall request a waiver in accordance with FAR 9.503 and 48 CFR 809.503.

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

(End of provision)

852.211-70 Service data manuals.

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

Service Data Manuals (NOV 1984)

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

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

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

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

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

shall be provided. If programming is either built-in and/or user modifiable, a complete software listing shall be supplied. Equipment items with software packages shall also include diagnostic routines and sample outputs. Submission information shall be given in the Maintenance Section to identify equipment malfunctions that are software related.

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

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

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

(i) *Section VII, Drawings.* Wiring and schematic diagrams shall be included. The drawings will depict the circuitry using standard symbols and shall include the reference designations and component values or type designators. Drawings shall be clear and legible and shall not be engineering or production sketches.

(End of clause)

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

(j) *Initial purchase.* The contractor agrees, when requested by the contracting officer, to furnish not more than three copies of the technical documentation required by paragraph 852.211-70(a) to the Service and Reclamation Division, Hines, IL. In addition, the contractor agrees to furnish two additional copies of the

technical documentation required by 852.211–70(a) with each piece of equipment sold as a result of the invitation for bid or request for proposal.

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

Service Data Manuals, Mechanical Equipment (JAN 2008)

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

(End of clause)

852.211-71 Special notice.

As prescribed in 870.112, insert the following provision:

Special Notice (JAN 2008)

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature that qualifies the offer will require rejection of the offer. However, within 5 days after award of the contract, the contractor will submit to the contracting officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements. The contracting officer will, by written notice to the contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment being proposed. The notice of approval or conditional approval will not relieve the contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the contractor. A notice of disapproval will cite reasons therefore. If the equipment is disapproved by the Government, the contractor will be subject to action under the Default or Termination for Cause provision of this contract. However, prior to default or termination for cause action the contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(End of provision)

852.211-72 Technical industry standards.

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

Technical Industry Standards (JAN 2008)

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

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

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

(End of provision)

852.211-73 Brand name or equal.

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

Brand Name or Equal (JAN 2008)

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

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

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

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

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

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

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

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

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

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

(End of clause)

852.211-74 Liquidated damages.

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

Liquidated Damages (JAN 2008)

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

(End of clause)

852.211-75 Product specifications.

As prescribed in 811.204, insert the following clause:

Product Specifications (JAN 2008)

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

(End of clause)

852.214-70 Caution to bidders—bid envelopes.

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

Caution to Bidders—Bid Envelopes (JAN 2008)

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

(End of provision)

852.214-71 Restrictions on alternate item(s).

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

Restrictions on Alternate Item(s) (JAN 2008)

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

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

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

(End of provision)

852.214-72 Alternate item(s).

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

Alternate Item(s) (JAN 2008)

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

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

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

(End of provision)

852.214-73 Alternate packaging and packing.

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

Alternate Packaging and Packing (JAN 2008)

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

(End of provision)

852.214-74 Bid samples.

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

Bid Samples (JAN 2008)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked with the complete lettering/numbering and description of the related bid item(s); the number of the Invitation

for Bids; and the name of the bidder submitting the bid sample(s). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all changes pertaining to the preparation and transportation of bid sample(s) must be prepaid by the bidder. Bid sample(s) must be received at the location specified in the solicitation by the time and date for receipt of bids.

(End of provision)

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

(DEC 2009)

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

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

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

(End of clause)

[74 FR 64636, Dec. 8, 2009]

852.215-71 Evaluation factor commitments.

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

Evaluation Factor Commitments

(DEC 2009)

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

(End of clause)

[74 FR 64636, Dec. 8, 2009]

852.216-70 Estimated quantities.

As prescribed in 816.504(a), insert the following clause:

Estimated Quantities (APR 1984)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

Alternate I (APR 1984). As prescribed in 816.504(b), insert the following clause:

Estimated Quantities (APR 1984)

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

Alternate II (APR 1984). As prescribed in 816.504(c), insert the following clause:

Estimated Quantities (APR 1984)

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of clause)

Alternate III (JUL 1989). As prescribed in 816.504(d), insert the following clause:

Estimated Quantities (JUL 1989)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of clause)

852.219-9 VA Small business subcontracting plan minimum requirements.

As prescribed in subpart 819.709, insert the following clause:

VA Small Business Subcontracting Plan Minimum Requirements (DEC 2009)

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

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

(c) For a commercial plan, the minimum goals for award of subcontracts to Service-Disabled Veteran-owned small business concerns and Veteran-owned small businesses shall be at least commensurate with the Department's annual Service-Disabled Veteran-owned small business and Veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of Service-Disabled Veteran-owned small businesses and Veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in 819.407.

(End of clause)

[74 FR 64636, Dec. 8, 2009]

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 (DEC 2009)

(a) *Definition.* For the Department of Veterans Affairs, "Service-Disabled Veteran-owned small business concern":

(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);

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

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

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

(2) "Service-Disabled Veteran" means a Veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(b) *General.* (1) Offers are solicited only from Service-Disabled Veteran-owned small business concerns. Offers received from concerns that are not Service-Disabled Veteran-owned small business concerns shall not be considered.

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

(c) *Agreement.* A Service-Disabled Veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible Service-Disabled Veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible Service-Disabled Veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible Service-Disabled Veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible Service-Disabled Veteran-owned small business concerns.

(d) A joint venture may be considered a Service-Disabled Veteran owned small business concern if—

(1) At least one member of the joint venture is a Service-Disabled Veteran-owned small business concern, and makes the following representations: That it is a Service-Disabled Veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation.

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

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

(End of clause)

[74 FR 64637, Dec. 8, 2009]

852.219-11 VA notice of total Veteran-owned small business set-aside.

As prescribed in 819.7009, insert the following clause:

VA Notice of Total Veteran-Owned Small Business Set-Aside

(DEC2009)

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

(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; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

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

(b) *General.* (1) Offers are solicited only from Veteran-owned small business concerns. All Service-Disabled Veteran-owned small businesses are also determined to be Veteran-owned small businesses if they meet the criteria identified in paragraph (a)(1) of this section. Offers received from concerns that are not Veteran-owned small business concerns shall not be considered.

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

(c) *Agreement.* A Veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible Veteran-owned small business concerns;

(2) Supplies (other than acquisition from a non-manufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible Veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible Veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible Veteran-owned small business concerns.

(d) A joint venture may be considered a Veteran-owned small business concern if:

(1) At least one member of the joint venture is a Veteran-owned small business concern, and makes the following representations: That it is a Veteran-owned small business concern, and that it is a small business concern under the NAICS code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), except that the principal company may be a Veteran-owned small business concern or a Service-Disabled Veteran-owned small business concern.

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

(End of clause)

[74 FR 64637, Dec. 8, 2009]

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)

[74 FR 64638, Dec. 8, 2009]

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

(DEC2009)

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)

[74 FR 64638, Dec. 8, 2009]

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

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

Contract Work Hours and Safety Standards Act—Nursing Home Care Contract Supplement (JAN 2008)

The following exemption to FAR clause 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, applies to this contract: A contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), provided:

- (a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;
- (b) There is an agreement or understanding between the contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;
- (c) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and
- (d) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of clause)

§ 852.228-70 Bond premium adjustment.

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

Bond Premium Adjustment (JAN 2008)

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

(End of clause)

§ 852.228-71 Indemnification and insurance.

As prescribed in 828.306, insert the following clause:

Indemnification and Insurance (JAN 2008)

(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 agreement. 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 of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a 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 contemplated, 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 installation, 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 Small Businesses and Veteran-Owned Small Businesses in Obtaining Bonds

(DEC2009)

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.

[74 FR 64638, Dec. 8, 2009]

§ 852.229-70 Sales or use taxes.

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

Sales or Use Taxes (JAN 2008)

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

(End of clause)

§ 852.229-71 [Reserved]

§ 852.233-70 Protest content/alternative dispute resolution.

As prescribed in 833.106, insert the following provision:

Protest Content/Alternative Dispute Resolution (JAN 2008)

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

- (1) Include the name, address, fax number, and telephone number of the protester;
- (2) Identify the solicitation and/or contract number;
- (3) Include an original signed by the protester or the protester's representative and at least one copy;
- (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;
- (5) Specifically request a ruling of the individual upon whom the protest is served;
- (6) State the form of relief requested; and
- (7) Provide all information establishing the timeliness of the protest.

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

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

(End of provision)

§ 852.233-71 Alternate protest procedure.

As prescribed in 833.106, insert the following provision:

Alternate Protest Procedure (JAN 1998)

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

(End of provision)

§ 852.236-70 [Reserved]

§ 852.236-71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

Specifications and Drawings for Construction (JUL 2002)

The clause entitled "Specifications and Drawings for Construction" in FAR 52.236-21 is supplemented as follows:

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

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of clause)

852.236-72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

Performance of Work by the Contractor (JUL 2002)

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

(a) Contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by the contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The contractor shall submit, simultaneously with the schedule of costs required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

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

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

(End of clause)

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

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

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

852.236-73 [Reserved]

852.236-74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

Inspection of Construction (JUL 2002)

The clause entitled "Inspection of Construction" in FAR 52.246-12 is supplemented as follows:

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

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

(End of clause)

852.236-75 [Reserved]

852.236-76 Correspondence.

As prescribed in 836.570, insert the following clause:

Correspondence (APR 1984)

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

(End of clause)

852.236-77 Reference to "standards".

As prescribed in 836.571, insert the following clause:

Reference to "Standards" (JUL 2002)

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

(End of clause)

852.236-78 Government supervision.

As prescribed in 836.572, insert the following clause:

Government Supervision (APR 1984)

- (a) The work will be under the direction of the Department of Veterans Affairs contracting officer, who may designate another VA employee to act as resident engineer at the construction site.
- (b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.
- (c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may, by written direction, make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of clause)

852.236-79 Daily report of workers and material.

As prescribed in 836.573, insert the following clause:

Daily Report of Workers and material (APR 1984)

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

(End of clause)

852.236-80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

Subcontracts and Work Coordination (APR 1984)

- (a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.
- (b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.
- (c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between subcontractors.

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

(End of clause)

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

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

852.236-81 [Reserved]

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

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

Payments Under Fixed-Price Construction Contracts (APR 1984)

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

(a) Retainage:

(1) The contracting officer may retain funds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

Value of Adjusting Correcting, and Testing System

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

Alternate 1 (JUL 2002). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

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

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform

satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

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

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

Payments Under Fixed-Price Construction Contracts (JUL 2002)

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

(a) Retainage:

(1) The contracting officer may retain funds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Value of Adjusting, Correcting, and Testing System

System	Percent
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the 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 and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236-84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

Schedule of Work Progress (NOV 1984)

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

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

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

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

(End of clause)

852.236-85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

Supplementary Labor Standards Provisions (APR 1984)

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

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

(End of clause)

852.236-86 Workers' compensation.

As prescribed in 836.577, insert the following clause:

Workers' Compensation (JAN 2008)

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

(End of clause)

852.236-87 Accident prevention.

As prescribed in 836.513, insert the following clause:

Accident Prevention (SEP 1993)

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with FAR 52.236-13, Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of clause)

852.236-88 Contract changes—supplement.

As prescribed in 836.578, insert the following clause:

Contract Changes—Supplement (JUL 2002)

The clauses entitled “Changes” in FAR 52.243–4 and “Differing Site Conditions” in FAR 52.236–2 are supplemented as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

852.236-89 Buy American Act.

As prescribed in Table 825.1102, insert the following clause:

Buy American Act (JAN 2008)

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

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

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

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

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

(End of clause)

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

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

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

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

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

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

other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

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

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

Restriction on Submission and Use of Equal Products (NOV 1986)

The clause applies to the following items:

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

(End of clause)

852.236-91 Special notes.

As prescribed in 836.579, insert the following clause:

Special Notes (JUL 2002)

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

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

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

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

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

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related

components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

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

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

(End of clause)

852.237-7 Indemnification and medical liability insurance.

As prescribed in 837.403, insert the following clause:

Indemnification and Medical Liability Insurance (JAN 2008)

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

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

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written

notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

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

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

(End of clause)

852.237-70 Contractor responsibilities.

As prescribed in 837.110, insert the following clause:

Contractor Responsibilities (APR 1984)

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

(End of clause)

852.246-70 Guarantee.

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

Guarantee (JAN 2008)

The contractor guarantees the equipment against defective material, workmanship and performance for a period of []¹, said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.²

(End of clause)

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

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

852.246-71 Inspection.

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

Inspection (JAN 2008)

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

(End of clause)

Alternate 1 (JAN 2008). As provided in 846.302–71(b), insert the following clause:

Inspection (JAN 2008)

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

(End of clause)

852.246-72 Frozen processed foods.

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

Frozen Processed Foods (JAN 2008)

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

(End of clause)

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

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

Noncompliance With Packaging, Packing and/or Marking Requirements (JAN 2008)

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining

authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of clause)

852.246-74 Special warranties.

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

Special Warranties (JAN 2008)

The clause entitled “Warranty of Construction” in FAR 52.246–21 is supplemented as follows:

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

(End of clause)

852.246-75 Warranty for construction—guarantee period services.

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

Warranty for Construction—Guarantee Period Services (JAN 2008)

The clause entitled “Warranty of Construction” in FAR 52.246–21 is supplemented as follows:

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

(End of clause)

852.247-70 Determining transportation costs for bid evaluation.

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

Determining Transportation Costs for Bid Evaluation (APR 1984)

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

Anticipated Demand

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

(End of provision)

852.252-70 Solicitation provisions or clauses incorporated by reference.

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

Solicitation Provisions or Clauses Incorporated by Reference (JAN 2008)

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

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

(End of provision)

852.270-1 Representatives of contracting officers.

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

Representatives of Contracting Officers (JAN 2008)

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

(End of provision)

852.270-2 Bread and bakery products—quantities.

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

Bread and Bakery Products—Quantities (JAN 2008)

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

(End of clause)

852.270-3 Purchase of shellfish.

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

Purchase of Shellfish (APR 1984)

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

(End of clause)

852.271-70 Nondiscrimination in services provided to beneficiaries.

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

Nondiscrimination in Services Provided to Beneficiaries (JAN 2008)

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

(End of provision)

852.271-71 [Reserved]

852.271-72 Time spent by counselee in counseling process.

As prescribed in 871.212, insert the following clause:

Time Spent by Counselee in Counseling Process (APR 1984)

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

(End of clause)

852.271-73 Use and publication of counseling results.

As prescribed in 871.212, insert the following clause:

Use and Publication of Counseling Results (JAN 2008)

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

(End of clause)

852.271-74 Inspection.

As prescribed in 871.212, insert the following clause:

Inspection (JAN 2008)

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

(End of clause)

852.271-75 Extension of contract period.

As prescribed in 871.212, insert the following clause:

Extension of Contract Period (APR 1984)

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

(End of clause)

852.273-70 Late offers.

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

Late Offers (JAN 2003)

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

(End of provision)

852.273-71 Alternative negotiation techniques.

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

Alternative Negotiation Techniques (JAN 2003)

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

(End of provision)

852.273-72 Alternative evaluation.

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

Alternative Evaluation (JAN 2003)

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

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

(End of provision)

852.273-73 Evaluation—health-care resources.

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

Evaluation—Health-Care Resources (JAN 2003)

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

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

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

(End of provision)

852.273-74 Award without exchanges.

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

Award Without Exchanges (JAN 2003)

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

(End of provision)