

# VAAR 852

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# **SUBCHAPTER H—CLAUSES AND FORMS**

## **PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

*(Revised 10/31/18)*

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

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## **Subpart 852.1—Instructions for Using Provisions and Clauses**

### **852.101 Using part 852.**

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

### **852.102 Incorporating provisions and clauses.**

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

incorporated by reference, in full text in a quotation, solicitation, or contract if the quotation, solicitation, or contract incorporates by reference a FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

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

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

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

(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: [/content/gsam-index](#)

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

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

**(Revised 10/31/2018)**

### **852.203-70 Commercial Advertising.**

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

#### **COMMERCIAL ADVERTISING (May 2018)**

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

(End of clause)

### **852.203-71 [RESERVED]**

## **852.207-70 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 Equipment Operation and Maintenance Manuals.**

As prescribed in 811.107-70, insert the following clause:

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

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

(End of clause)

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

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

As prescribed in 811.204-70, insert the following clause:

#### **TECHNICAL INDUSTRY STANDARDS (NOV 2018)**

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

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

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

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

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

(End of clause)

**852.211-73 [RESERVED]**

**852.211-74 [RESERVED]**

**852.211-75 [RESERVED]**

**852.214-70 [RESERVED]**

**852.214-71 Restrictions on Alternate Item(s).**

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

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

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

(End of provision)

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

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

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

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

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

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

(End of provision)

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

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

**852.214-73 Alternate packaging and packing.**

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

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

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

(End of provision)

**852.214-74 Marking of bid samples.**



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

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

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

(End of provision)

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

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

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

**SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED**

**SMALL BUSINESS EVALUATION FACTORS**

**(JUL 2016) (DEVIATION)**

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

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

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or

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

(End of clause)

**852.215-71 Evaluation Factor Commitments.**

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

**EVALUATION FACTOR COMMITMENTS (DEC 2009)**

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

(End of clause)

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

**852.216-70 [Reserved]**

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

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

**ECONOMIC PRICE ADJUSTMENT OF CONTRACT PRICE(S)**

**BASED ON A PRICE INDEX (MAR 2018)**

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

(b) The Base and Adjusting Indexes, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_,<sup>1</sup> as contained in \_\_\_\_\_,<sup>2</sup> as published by \_\_\_\_\_.<sup>3</sup> All adjustments

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

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

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

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

(d) The dates of contract adjustment shall be \_\_\_\_\_<sup>6</sup> and the starting dates of each option year, if not already included in these dates. The Contracting Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified in this paragraph (d), shall obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting the unit or contract prices, as specified in paragraph (c). The adjusted unit or contract prices shall be effective for all orders placed or services provided after the date of contract adjustment as specified in this paragraph (d) until the beginning of the next contract adjustment period. If the Contracting Officer fails to act, the Contractor shall request in writing a contract adjustment and any subsequent adjustment shall be retroactive to the applicable date of contract adjustment specified in this paragraph (d). The Contractor's entitlement to price

increases for a prior contract period (base year or option year) is waived unless the Contractor's written request for an adjustment under this clause is received by the Contracting Officer no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year. The Government's right to contract decreases for prior contract periods (base year or option year) is waived unless the Contracting Officer processes a contract modification no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year.

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

(1) The original contract price or line item prices for that contract term (*e.g.*, base

year) shall be used for all calculations during that particular contract term and new calculations shall be made for each and every contract adjustment period specified in paragraph (d) during that contract term.

(2) For purposes of this example, the contract prices for the line items as specified in paragraph (c) will be adjusted by the percentage calculated as follows:

Adjusting Index for the current period 196.6

Minus the Base Index -188.0

Equals the Index Point Change 8.6

Index Point Change Divided by the Base Index  $8.6 / 188.0 = .0457^*$

Result Multiplied by 100 Equals the Percentage Change 4.57%

(The Index Point Change Percentage)

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

(3) For a line item with an original bid price of \$25.00 and a 4.57 percent Index Point Change increase as of the first contract adjustment period, as shown above, the calculations for a new contract price for the first contract adjustment period would be as follows:  $\$25.00 \times .0457 = \$1.14$ ,  $\$25 + \$1.14 = \$26.14^{**}$ . The new contract price for this line item from the beginning of that first contract adjustment period until the start of the next contract adjustment

period would be \$26.14 and the contracting officer would issue a contract modification reflecting this price change.

\*\*The unit price adjustment shall be rounded up or down, as in paragraph (e)(1) above, to match the number of decimal places in the original bid.

(4) If the Adjusting Index went down for the second adjustment period, reflecting only a 3 percent Index Point Change increase over the Base Index, the new price for this sample line item would be reduced for the second contract adjustment period from \$26.14 to \$25.75 as follows:  $\$25 \times .03 = \$0.75$ ,  $\$25 + \$0.75 = \$25.75$ . Note that the calculations for the second contract adjustment period are based on the original contract price for that contract term of \$25.00. The contract price for this line item is modified to reflect this new price for the second contract adjustment period.

(5) At the start of the first option year and each subsequent option year period (as well as for each contract adjustment period specified in paragraph (d) during that option year, if different), the Contracting Officer shall recalculate the contract or unit prices for that first option year based on any changes between the Adjusting Index and the Base Index, from the original contract award date to the start of the first option period, and based on the Contractor's new option year prices. Assume the Contractor's bid price for

the first option year for the above sample line item was \$25.50 and the calculations shown in paragraph (e)(1) of this clause at the start of the first option period reflected a 6 percent Index Point Change. The new contract price for this sample line item at the start of the first option period would be calculated as follows:  $\$25.50 \times .06 = \$1.53$ ,  $\$25.50 + \$1.53 = \$27.03$ . The Contracting Officer would process a contract modification reflecting a revised contract price of \$27.03 for the first contract adjustment period in the first option year.

(f) Price adjustments pursuant to this clause, shall be documented by a contract modification issued by the Contracting Officer, show the Base Index (see paragraph (b)(1)), the Adjusting Index, the adjusted contract prices (see paragraph (c)), the mathematical calculations used to arrive at the adjusted contract prices, and the effective date of the adjustment (see paragraph (d)).

(g) At the start of each option year, the Contracting Officer shall, within 5 days of the start of the option year period, process a contract modification adjusting the option year prices by the then current Index Point Change percentage, if any, reflecting the new adjusted prices for that first contract adjustment period in that option year.

(h) In the event that \_\_\_\_\_<sup>7</sup> discontinues, or alters substantially, its method of calculating the Index cited herein, the parties

shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the Contracting Officer determines that the Index consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify the use of an appropriate substitute index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

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

(End of clause)

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

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

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

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

(b) The cost index, for the purpose of price adjustment under this clause, shall be \_\_\_\_\_<sup>8</sup> as contained in \_\_\_\_\_<sup>9</sup> as published by \_\_\_\_\_

\_\_\_\_\_.<sup>10</sup> All adjustments authorized under this clause shall be made by using the Base Index and Adjusting Indexes, which are published \_\_\_\_\_.<sup>11</sup>

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

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

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

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

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

(f) The dates of contract adjustment shall be \_\_\_\_\_<sup>16</sup> and the starting dates of each option year, if not already included in these dates. The Contracting Officer shall retain a copy of the Base Index in the contract file and, on each date of adjustment specified herein, obtain a copy of the Adjusting Index. The Contracting Officer shall calculate the adjustment due and shall, within 5 business days, issue a modification to the contract adjusting the contract or unit price(s). The adjusted contract or unit price(s) shall be effective for all orders placed or services provided after the date of contract adjustment, as specified in this paragraph (f), until the date of the next contract adjustment. If the Contracting Officer fails to act, the Contractor shall request a contract adjustment in writing and any subsequent adjustment shall be retroactive to the applicable date of contract adjustment. The Contractor's entitlement to price increases for a prior contract period (base year or option year) shall be waived unless the Contractor's written request for an adjustment under this clause is received by the Contracting Officer no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year. The Government's right to contract decreases for prior contract periods (base year or option year) shall be waived unless the Contracting Officer processes a

contract modification no later than 30 days following the end of the base year for changes applicable to the base year, or 30 days following the end of each option year for changes applicable to that option year.

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

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

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

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

Divide increase (or decrease) to the

Base Index by the Base Index  $\$0.570 \div \$1.559 = .3656^*$

(36.56% increase)

Base Cost of \$0.21 (10% of \$2.10) multiplied by .3656 = \$0.0768 unit price increase.

New Unit price following the adjustment is \$2.10 plus \$0.0768 = \$2.1768 per mile (rounded to \$2.18)\*\* .

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

\*\*The unit price adjustment shall be rounded up or down, as above, to match the number of decimal places in the original bid.

(2) For the second contract adjustment period, all calculations would be based on the original contract bid price for that contract year, \$2.10 per mile in this example. If the price of gasoline goes down during the second adjustment period to the original Base Index price of \$1.559 per gallon, the adjusted contract price for that second period would return to \$2.10 per mile (there would be a zero percent increase or decrease to the Base Cost and thus no change to the original bid price for that contract adjustment period). The Contracting Officer would then issue a contract modification returning the contract price from \$2.18 to \$2.10 per mile for that contract adjustment period. If, on the other hand, the price of gasoline actually went below the Base Index price, say to \$1.449 per gallon, the calculations for the second economic price adjustment period would be as follows:

Adjusting Index (most recent Index  
cost of gasoline as of the date of  
the second adjustment  
period) \$1.449 per gallon

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

Equals increase (or decrease) to  
Base Index (\$0.110) (a negative \$.11)  
Divide increase (or decrease) to the  
Base Index by the Base Index ( $\$0.11 + \$1.559 = (.0706)$ )  
(7.06% decrease)

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

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



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

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

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

Equals increase (or decrease) to the

Base Index \$0.340

Divide the increase (or decrease) to the

Base Index by the Base Index  $\$0.34 + \$1.559 = .2181$

(21.81% increase)

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

price increase.

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

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

this sample for the first option year from \$2.10 to \$2.25.

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

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

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

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

(End of clause)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

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

## **ECONOMIC PRICE ADJUSTMENT—MEDICAID LABOR RATES**

**(MAR 2018)**

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

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

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

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

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

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

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

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

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

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

(d) The Contracting Officer, precluding certified cost and pricing data may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe

benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

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

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

**ECONOMIC PRICE ADJUSTMENT CLAUSE—FUEL SURCHARGE**

**(MAR 2018)**

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

contract for any option periods do not include any amount to protect against such contingent fuel cost increases.

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

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

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

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

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

\$2.88 - \$2.13

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

per delivered case to each invoice,

Fuel Price \$3.05 Calculation: starting first Monday of July.

3rd QTR Diesel Fuel Price decrease  $\$2.13 - 1.80 = \$ .33$  (rounded down to \$.30 cents) Credit each invoice

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

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

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

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

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

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

(End of clause)

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

As prescribed in subpart 819.709, insert the following clause:

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

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

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-

owned small business concerns shall be at least commensurate with the Department's annual service-disabled

veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

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.

(c) 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.

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

(End of clause)

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

**852.219-10 VA Notice of total service-disabled veteran-owned small business set-aside.**

As prescribed in 819.7009, insert the following clause:

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

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

(1) Means a small business concern:

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

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans (or eligible surviving

spouses) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

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

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

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

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

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

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

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

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

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

(End of clause)

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

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

As prescribed in 819.7009, insert the following clause:

**VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE**

**(JUL 2016) (DEVIATION)**

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

(1) Means a small business concern—



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

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

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

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

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

(b) General.

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

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

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

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

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

(End of clause)

### **852.219-71 VA Mentor-Protégé Program.**

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

#### **VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)**

(a) Large businesses are encouraged to participate in the VA

Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as

subcontractors.

(b) The program consists of:

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

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

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

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

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

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

(End of clause)

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

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

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

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

(End of clause)

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

rescinded.]

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

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

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

(a) This solicitation includes \_\_\_\_\_ *[Fill-in clause/provision]*

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

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

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

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

(End of clause)

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

As prescribed in 819.7203(b) insert the following:

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

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

(b) The Contractor is advised that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) to

assist in assessing Contractor compliance with the subcontracting commitments incorporated into the contract. To that end, the support contractor(s) may require access to the Contractor's business records or other proprietary data to review such business records regarding contract compliance with this requirement.

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

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

(End of clause)

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

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

#### **SUBCONTRACTING PLANS MONITORING AND COMPLIANCE**

##### **(JUL 2018) (DEVIATION)**

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

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

(c) All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected

to ensure information or data is not improperly disclosed or other impropriety occurs.

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

(End of clause)

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

As prescribed in 822.305, insert the following clause:

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

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

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

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

(3) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

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

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

(End of clause)

**852.228-70 Bond Premium Adjustment.**

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

**BOND PREMIUM ADJUSTMENT (JAN 2008)**

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

(End of clause)

**852.228-71 Indemnification and Insurance.**

As prescribed in 828.306, insert the following clause:

**INDEMNIFICATION AND INSURANCE (MAR 2018)**

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

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of this contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workers' compensation and employer's liability coverage will conform to applicable State law requirements for the service defined, whereas general liability and automobile liability of comprehensive type shall, in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. State-approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. [*Contracting Officer's Note: In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least \$200,000 per passenger and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.*]

(End of clause)

**852.228-72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned**

# **Small Businesses in Obtaining Bonds.**

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

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

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

in obtaining any required bonds under subcontracts.

(End of clause)

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

As prescribed in 828.7003, insert the following clause:

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

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

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

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

(b) The Government shall indemnify a Contractor for:

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

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

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

(2) The Government shall also indemnify the Contractor for loss of or damage to property of the

Contractor from a risk that the contract defines as unusually hazardous.

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

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

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

(d) Actions in event of a claim—

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

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

(End of clause)

**852.229-70 [RESERVED]**

**852.229-71 [RESERVED]**

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

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

**PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS**

**(WITHOUT NAS-CPM) (NOV 2018)**

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

(a) Retainage.

(1) The Contracting Officer may retain funds—

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

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

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



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

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

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

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

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

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

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

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

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

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

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

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

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

Contractor reasonably expects to pay over the guarantee period, all of which will be subject to the Contracting Officer's approval.

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

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

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

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

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

(a) Retainage.

(1) The Contracting Officer may retain funds—

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

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

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

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

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

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

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

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

(b) The Contractor shall submit a schedule of cost in accordance with the requirements of section "Network Analysis System—Critical Path Method (NAS—CPM)" to the Contracting Officer for

approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the Contractor for work completed.

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

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

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

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

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

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

<u>System</u>	<u>Percent</u>
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system (Specified under 600 Sections)	5
Entire boiler plant system (Specified under 700 Sections)	5

General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

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

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

- (1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;
- (2) The materials and/or equipment are approved by the resident engineer;
- (3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;
- (4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and

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

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

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

(End of clause)

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

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

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

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

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

As prescribed in 832.7001-2, insert the following clause:

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

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

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

(2) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(End of clause)

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

As prescribed in 833.106-70(a), insert the following provision:

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

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

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

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

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

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

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

(6) State the form of relief requested; and

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

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

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

(End of provision)

**852.233-71 Alternate Protest Procedure.**

As prescribed in 833.106-70(b), insert the following provision:

**ALTERNATE PROTEST PROCEDURE (OCT 2018)**

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

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

(End of provision)

**852.236-70 [Reserved]**

**852.236-71 Specifications and drawings for construction.**

As prescribed in 836.521, insert the following clause:

**SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (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 (JAN 2008). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

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

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

### **852.236-73 [RESERVED]**

### **852.236-74 Inspection of construction.**

As prescribed in 846.312, insert the following clause:

### **INSPECTION OF CONSTRUCTION (JUL 2002)**

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

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

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

(End of clause)

### **852.236-75 [RESERVED]**

**852.236-76 Correspondence.**

As prescribed in 836.570, insert the following clause:

**CORRESPONDENCE (APR 1984)**

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

(End of clause)

**852.236-77 Reference to "standards".**

As prescribed in 836.571, insert the following clause:

**REFERENCE TO "STANDARDS" (JUL 2002)**

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

(End of clause)

**852.236-78 Government supervision.**

As prescribed in 836.572, insert the following clause:

**GOVERNMENT SUPERVISION (APR 1984)**

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

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

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

(End of clause)

**852.236-79 Daily report of workers and material.**

As prescribed in 836.573, insert the following clause:

**DAILY REPORT OF WORKERS AND MATERIAL (APR 1984)**

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

(End of clause)

**852.236-80 Subcontracts and work coordination.**

As prescribed in 836.574, insert the following clause:

**SUBCONTRACTS AND WORK COORDINATION (APR 1984)**

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

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

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

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

(End of clause)

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

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

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

**852.236-83 [RESERVED]**

**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:

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

(End of clause)

**852.236-91 Special notes.**

As prescribed in 836.579, insert the following clause:

**Special Notes (JUL 2002)**

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

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

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

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

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

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

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

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

(End of clause)

### **852.237-7 Indemnification and medical liability insurance.**

As prescribed in 837.403, insert the following clause:

#### **INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 2008)**

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

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

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

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

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

**852.246-71 Rejected Goods.**

As prescribed in 846.370-1, insert the following clause:

**REJECTED GOODS (OCT 2018)**

(a) *Supplies and equipment.* Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the Contractor's address at the Contractor's risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the Contractor.

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

(End of clause)

**852.246-72 Frozen Processed Foods.**

As prescribed in 846.370-2, insert the following clause:

**FROZEN PROCESSED FOODS (OCT 2018)**

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

(End of clause)

**852.246-73 Noncompliance with Packaging, Packing, and/or Marking Requirements.**

As prescribed in 846.370-3, insert the following clause:

**NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS  
(OCT 2018)**

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

(End of clause)

**852.246-74 [RESERVED]**

**852.246-75 Warranty of Construction—Guarantee Period Services.**

As prescribed in 846.702-70(e), insert the following clause:

**WARRANTY OF CONSTRUCTION—GUARANTEE PERIOD SERVICES**

**(OCT 2018)**

The clause 52.246-21, Warranty of Construction, is supplemented as follows:

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

(End of clause)

**852.246-76 Purchase of Shellfish.**

As prescribed in 846.370-4 insert the following clause:

**PURCHASE OF SHELLFISH (OCT 2018)**

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



on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

**852.247-70 Determining Transportation Costs for Evaluation of Offers.**

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

**DETERMINING TRANSPORTATION COSTS FOR EVALUATION OF OFFERS**

**(OCT 2018)**

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

**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)

**852.247-71 Delivery Location.**

As prescribed in 847.302, insert a clause substantially as follows:

**DELIVERY LOCATION (OCT 2018)**

Shipment of deliverable items, other than reports, shall be to: \_\_\_\_\_ [Contracting Officer shall insert appropriate identifying data].

(End of clause)

**852.247-72 Marking Deliverables.**

As prescribed in 847.305-10(a), insert a clause substantially the same as:

**MARKING DELIVERABLES (OCT 2018)**

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: \_\_\_\_\_ [*Contracting Officer shall insert appropriate identifying data*].

(End of clause)

**852.247-73 Packing for Domestic Shipment.**

As prescribed in 847.305-10(b), insert the following clause:

**PACKING FOR DOMESTIC SHIPMENT (OCT 2018)**

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with regulations of carriers as applicable to the mode of transportation.

(End of clause)

**852.247-74 Advance Notice of Shipment**

As prescribed in 847.305-71(a), insert the following clause:

**ADVANCE NOTICE OF SHIPMENT (OCT 2018)**

\_\_\_\_\_ [*Insert number of work days*] work days prior to shipping item(s). \_\_\_\_\_ [*Insert items to be shipped*], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to \_\_\_\_\_ [*Insert individual(s) to receive notification*] and to the Contracting Officer.

(End of clause)

**852.247-75 Bills of Lading.**

As prescribed in 847.305-71(b), insert the following clause:

**BILLS OF LADING (OCT 2018)**

The purpose of this clause is to define when a commercial bill of lading or a Government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial bills of lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by [company name], and paid freight or comparable receipts are not obtainable.

Contract or Order Number: \_\_\_\_\_

Destination: \_\_\_\_\_."

(b) *Government bills of lading.*

(1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continental United States, i.e., Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: \_\_\_\_\_ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: \_\_\_\_\_ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

- (i) Item identification/description.
- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional weight.
- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of clause)

**852.252-70 Solicitation provisions or clauses incorporated by reference.**

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

## **SOLICITATION PROVISIONS OR CLAUSES INCORPORATED BY REFERENCE (JAN 2008)**

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

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

(End of provision)

### **852.270-1 Representatives of contracting officers.**

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

#### **REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)**

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

(End of provision)

### **852.270-2 [RESERVED]**

### **852.270-3 [RESERVED]**

### **852.271-70 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)

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