



VETERANS AFFAIRS ACQUISITION MANUAL

2018 EDITION

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M801.604-70 Contracting Officer's Representative (COR) Guidance.

(a) Responsibilities

(1) COR Training and Certification. VA personnel nominated to be CORs should complete the necessary training, and attain the necessary The Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) certification level commensurate with the complexity and risk level(s) of the acquisition(s)/contract(s) they will be/are assigned to. Personnel nominated as COR(s) should familiarize themselves with the VA COR program ([VA Handbook 7403](#)). Nominees, and/or existing CORs, should consider taking courses that enhances their knowledge and capabilities to include attaining a higher FAC-COR certification level, as appropriate. COR(s) must also ensure that they attain the necessary [Continuous Learning Points \(CLPs\)](#) required to maintain their current FAC-COR certification level, as required every two (2) years. It is highly recommended that CORs take the COR refresher course every few years, which is also offered by the VA Acquisition Academy.

(2) COR Pre-Award Responsibilities. In accordance with [FAR 7.104\(e\)](#), early identification and nomination of the person to serve as the COR for an acquisition not only ensures a successful award of contract(s), but also ensures that the Program Office/End-users' contractual needs are fully considered during acquisition planning. As required by [FAR 1.602-2\(d\)](#), the nominated personnel must be appointed as COR in writing. Once a VA personnel is appointed as the COR, the COR should assist in, but not limited to, accomplishing the following:

(i) Developing requirements documents. (Performance Work Statement (PWS), Statement of Objectives (SOO), Statement of Work (SOW), Solicitation instructions to offerors, evaluation criteria, Item Descriptions, etc.)

(ii) Developing Quality Assurance Surveillance Plans (QASPs), evaluation criteria for contract deliverables, etc.

(iii) Developing Brand Name Justifications, Sole Source Justifications, Consolidation analysis, etc.

(iv) Conducting market research and evaluate industry responses.

(v) Recommending set-aside and acquisition strategies.

(vi) Addressing any Organizational Conflicts of Interest (see [FAR 9.5](#)).

(3) COR Post-Award Responsibilities. After award of contract, in accordance with [FAR 1.602-2\(d\)\(7\)](#), the COR appointment letter should be forwarded to the awarded contractor for their records. CORs should strive to fully understand the terms and conditions of the contract(s) they are assigned to. In addition, COR(s) may be tasked to accomplish, but not limited to, the following tasks during the Post Award phase:

(i) Act as the authorized representative for contract administration functions that do not involve changes to scope, price, schedule and any other contract terms and conditions

(ii) Ensuring familiarization and compliance with COR roles and responsibilities assigned in [VA Handbook 6500.6 Contract Security](#).

(iii) Updating the contracting officer of the progress of the contract effort, to include providing suggestions for improvements.

(iv) Documenting and updating the contracting officer of the contractor's performance on regular basis, in accordance with the contract QASP or deliverable schedule, or as agreed upon in the contract.

(v) Drafting and submitting the annual contractor performance/assessment review in the [Contractor Performance Assessment Reporting System \(CPARS\)](#).

(vi) Recommending, in coordination with the Program Office, to the contracting officer whether Option Period(s) or Optional Task(s) should be exercised if any are included in the contract.

(vii) Assisting the contracting officer in contract modifications, negotiation and/or resolving contract disputes.

(viii) Maintaining situational awareness of obligated funds in the contract and/or, in coordination with the program office, recommending de-obligation of funds, as appropriate.

(ix) Invoice and Deliverables review and acceptance, in collaboration with the Program Manager and/or Program Office representative.

(A) COR(s), in addition to the Program Manager(s), must review the submitted contract deliverables/progress, to include but not limited to, status reports, inventory management reports, etc., in a timely manner. CORs should ensure that the submitted contract deliverables/progress are in adherence to the terms and conditions of the contract(s). CORs, in coordination with the Program Manager(s), must also document in writing the rationale for accepting/rejecting deliverables in their eCOR files to include the deliverables' level of acceptability. It is not sufficient to simply state that acceptance/rejection of deliverables/progress was made based on the recommendation of another Government employee. It is incumbent on the COR to be able to fully justify the rationale for the acceptance/rejection of submitted deliverables. CORs should notify the contracting officer in writing of the Program Office's decision on the submitted contract deliverables/progress, and include the rationale for acceptance/rejection (to include the level of acceptability).

(B) COR(s), in addition to the Program Manager(s), must review the contractor's submitted invoices for payment in a timely manner. Since contracting officer(s) are required by [VAAM M832.904\(a\)](#) to define the "*time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments,*" CORs should review the terms and conditions of the contract(s) they are assigned to, and process invoices within the time period specified in the contract(s). As with contract deliverables, CORs must document in writing the rationale for accepting/rejecting invoices in their eCOR files, to include the Program Office's recommendations for full/partial/nonpayment of the contractor(s)' submitted invoice(s). CORs must also include documentation of payment being completed (if the Program Office recommends payment). It is not sufficient to simply state that acceptance/rejection of the submitted invoice(s) were made because an invoice was submitted. The COR must ensure the Government actually received the item(s)/service(s), per the contract. In addition, the COR should not recommend invoice payment solely on the recommendation of another Government employee. After acceptance/rejection of submitted invoices, CORs should notify the contracting officer in writing of the Program Office's decision and include the Program Office's rationale to accept/reject the contractor's submitted invoice.

(x) COR files and documentation. CORs must maintain meticulous records and ensure compliance with the requirements of [FAR 4.805](#), VA Directive and Handbooks 6300.1 and/or any other applicable SOPs. In addition, in compliance with [VAAM M804.802-70\(g\)\(3\)](#), CORs must ensure to upload all necessary COR documentation to eCMS-Contracting Officer Representative (eCOR), to include the written determination to accept/reject contract deliverables and invoices for payments. CORs should also work with their respective contracting officers to ensure the eCOR file is complete and perform an eCOR records review on a regular basis (e.g. monthly, quarterly, etc.).

(xi) Contract Closeout. CORs should assist with closeout of contracts as they expire. CORs should assist, but not limited to, the following actions:

(A) Ensuring all contract deliverables has been delivered and accepted/rejected.

(B) Ensuring the final CPARS entry has been accomplished.

(C) Ensuring all proper invoices has been processed.

(D) Ensuring to recommend that all undisbursed funds should be de-obligated.

(E) Ensuring their eCOR files are complete.

(F) If applicable, begin working with the contracting officer on the re-acquisition of the contract effort.

(4) Rescission/Termination of COR nomination. The contracting officer has the authority to rescind the COR's authority and/or appointment at any time such as when a conflict of interest arises, the COR leaves the Program Office or federal service, etc. A COR's nomination also expires when the contract is fully complete, i.e. after all services/goods have been received, final payment has been authorized, AND all necessary contract closeout requirements has been accomplished. A COR's appointment must be rescinded in writing, with a copy of the rescission/termination forwarded to the contractor for their records.

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

**PART 803—IMPROPER BUSINESS PRACTICES AND
PERSONAL CONFLICTS OF INTEREST**

Subpart M803.1—Safeguards M803.101 Standards of conduct.

M803.101-1 General.

Department of Veterans Affairs (VA) core values and characteristics serve as the foundation for the way VA employees should interact with each other, as well as with people outside the organization, articulate what VA stands for, and underscore its moral obligation to veterans, their families, and other beneficiaries. They are intended to establish one overarching set of guidelines that apply to all VA Administrations and staff offices, confirming the values already instilled in many VA employees and enforcing their commitment to provide the best service possible to veterans, their families, and their caretakers.

M803.101-3 Agency regulations.

Part 0 of 38 Code of Federal Regulations (CFR) states the standards of conduct for all VA employees, including contracting officials. Subpart C of 38 CFR part 0 contains the employee financial disclosure.

M803.101-70 Department of Veterans Affairs Designated Agency Ethics Officials.

(a) For VA Central Office (VACO) use email GovernmentEthics@va.gov VACO's Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official.

(b) Designated Deputy Agency Ethics Official Outside VACO:

Use email address OGCNorthEastEthics@va.gov to contact Deputy Agency Ethics Official servicing Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Ohio, West Virginia, Michigan and Wisconsin.

Use email address OGCSouthEastEthics@va.gov to contact Deputy Agency Ethics Official servicing Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, Southern Texas and Puerto Rico.

Use email address OGCMidwestEthics@va.gov to contact Deputy Agency Ethics Official servicing the District of Columbia, Maryland, Indiana, Kentucky, Tennessee, Arkansas, Missouri, Illinois, Iowa, Minnesota, North Dakota, South Dakota, Nebraska and Kansas.

Use email address OGCWestEthics@va.gov to contact Deputy Agency Ethics Official servicing Northern Texas, Oklahoma, New Mexico, Arizona, Colorado, Utah, Wyoming, Montana, Idaho, Nevada, California, Oregon, Washington, Hawaii, Alaska, Guam and Philippines.

In addition, Ethics team contact information can be obtained at this website:

http://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf

M803.104 Procurement Integrity.

M803.104-4 Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information.

(a) *Authorized access to contractor bid or proposal information, and source selection information.*

(1) The following persons may access contractor bid or proposal information and source selection information to accomplish their responsibilities in a procurement action:

(i) Requirements generators, including client agency representatives, and program and technical experts who develop statements of work, specifications or similar documents;

(ii) Contracting personnel supporting the contracting officer;

(iii) Personnel serving on technical evaluation boards or source selection evaluation boards;

(iv) Supervisors in the contracting officer's chain of command;

(v) Secretarial, clerical and administrative personnel of the contracting activity responsible for the procurement;

(vi) Small Business Technical Advisors;

(vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under [FAR 19.302](#), process applications for Certificates of Competency under [FAR 19.6](#), review subcontracting plans, or award contracts under the 8(a) program;

(viii) Credit and finance personnel who support the contracting officer in making contractor responsibility determinations;

(ix) Contract auditors in the Office of Inspector General.

(x) Department of Labor (DOL) personnel who process preaward EEO clearances under [FAR 22.805](#);

(xi) Attorneys in the Office of General Counsel (OGC) and supporting legal counsel's offices; and

(xii) Personnel involved in contract approval.

(2) The Senior Procurement Executive may authorize additional persons access to contractor bid or proposal information or source selection information.

(3) The contracting officer may authorize access to contractor bid or proposal information or source selection information if necessary to conduct the procurement. This includes release of information to outside evaluators under [FAR 9.505-4](#) and [37.204](#). Limit access to only that information the person needs to do their job.

(b) *Procedures for marking and protecting information.* Anyone who prepares, makes, or controls contractor bid or proposal information and source selection information shall:

(1) Mark each page of the documents as prescribed in [FAR 3.104-4\(c\)](#).

(2) Provide physical security for documents in the office environment during, and after, duty hours.

(3) Secure interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope, and sealing envelopes securely.

(4) Maintain strict control over oral communications about the acquisition.

M803.104-7 Violations or possible violations.

(a) (1) A contracting officer who receives or obtains information of a violation or possible violation of the Procurement Integrity Act shall forward the information and documentation supporting a determination whether or not there is an impact on the procurement to the head of the contracting activity (HCA). In consultation with OGC, the HCA may make the determination and concurrence to proceed with the award as specified in [FAR 3.104-7\(a\)\(1\)](#).

(b) If the HCA, after reviewing the contracting officer's recommendation in (a)(1) of this subsection, determines that the violation or possible violation impacts the procurement, the HCA shall, take one of the following actions:

- (1) Advise the contracting officer to continue with the procurement;
- (2) Begin an investigation by reporting violations or possible violations to the VA Office of the Inspector General;
- (3) Refer the information disclosed to appropriate criminal investigative agencies;
- (4) Conclude that a violation occurred; or
- (5) Recommend that a determination under [FAR 3.104-7\(b\)\(5\)](#) be made that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

The authority to make the determination in (b)(5) is delegated to the Senior Procurement Executive (SPE) and is further delegated to the Deputy Senior Procurement Executive (DSPE).

(c) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see [FAR 3.104-3](#)), the HCA, in coordination with legal counsel, shall take appropriate action described in [FAR 3.104-7\(b\)\(1\), \(2\), \(3\), or \(4\)](#), such as:

- (1) Advise the contracting officer to continue with the procurement;
- (2) Begin an investigation;
- (3) Refer the information disclosed to appropriate criminal investigative agencies;
- (4) Conclude that a violation occurred; or
- (5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(d)(2)(ii)(B) The authority to make the determination in [3.104-7\(d\)\(2\)\(ii\)\(B\)](#) to void or rescind a contract for violation of the Procurement Integrity Act is delegated to the HCA.

(3) The agency Suspension and Debarment Official (SDO) is the DSPE (see 802.101).

(f) As provided in [FAR 3.104-7\(f\)](#), if the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.

Subpart M803.2—Contractor Gratuities to Government Personnel

M803.203 Reporting suspected violations of the Gratuities clause.

(a) VA employees shall report suspected violations of the [Gratuities clause, 52.203-3](#), through the contracting officer to the HCA.

(b) (1) The report shall identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(2) The HCA, in coordination with the supporting legal counsel, shall confirm whether the violation is evident and, if confirmed, report the violations to the SDO.

M803.204 Treatment of violations.

The DSPE is the Suspending and Debarment Official (SDO) designated to make the determination under [FAR 3.204\(a\)](#). The SDO, with the review and concurrence of OGC, shall make the final determination of whether or not a violation has occurred and shall advise the HCA of the decision and the actions to take under [FAR 3.204\(c\)](#).

(b) The Suspension and Debarment Committee (S&D) and SDO shall follow procedures in VAAR 809.406-3 when debarment is being considered.

(c)(3) The authority to assess exemplary damages under a contract that uses money appropriated to the Department of Defense is delegated to the SDO.

Subpart M803.3—Reports of Suspected Antitrust Violations

M803.303 Reporting suspected antitrust violations.

(a) Any VA employee who suspects or has evidence of possible antitrust violations shall report the suspected violations, in accordance with [FAR 3.303](#), to the VA Office of the Inspector General and to the Deputy Senior Procurement Executive (DSPE) for review and submission to OGC. The OGC in coordination with the Office of Inspector General shall determine whether to refer suspected fraudulent or criminal matters to the U.S. Attorney General.

Subpart M803.4—Contingent Fees

M803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees, shall report the matter to the contracting officer. The contracting officer, in accordance with HCA procedures, shall report a suspected or actual misrepresentation or violation to the Deputy Senior Procurement Executive (DSPE).

(b) Before taking any administrative action under [FAR 3.405](#), the contracting officer shall consult with OGC or supporting legal Counsel.

(4) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under [FAR 3.405\(b\)\(4\)](#) through supporting legal Counsel or OGC, or the VA Office of the Inspector General, with a copy to the DSPE. Counsel or the Inspector General shall determine whether to forward the referral to the Department of Justice.

Subpart M803.5—Other Improper Business Practices

M803.502 Subcontractor kickbacks.

A VA employee who suspects a violation of the Anti-kickback Act shall report the suspected violation to the contracting officer and to OGC.

Subpart M803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

M803.602 Exceptions.

The authority to authorize an exception to the policy in [FAR 3.601](#) is delegated to the Senior Procurement Executive (SPE)/Deputy Senior Procurement Executive (DSPE).

Subpart M803.7—Voiding and Rescinding Contracts

M803.703 Authority.

(a) The authority to void or rescind contracts is delegated to the HCA.

(b)(2) The authority to make the determination at FAR [3.703\(b\)\(2\)](#) is delegated to the HCA.

M803.704 Policy.

(a) The authority in [FAR 3.704\(c\)](#) to void and rescind contracts, and to initiate suspension or debarment proceedings is delegated to the HCA.

M803.705 Procedures.

(c) In making a determination required at M803.703(b), to void or rescind a contract, the HCA shall follow the procedures of [FAR 3.705](#).

Subpart M803.8—Limitations on the Payment of Funds to Influence Federal Transactions

M803.804 Policy.

A contracting officer shall forward a copy of all contractor disclosures furnished under the clause at [FAR 52.203-12](#), Limitations on Payments to Influence Certain Federal Transactions, to the Senior Procurement Executive (SPE)/ Deputy Senior Procurement Executive (DSPE) for subsequent submission by the Secretary to Congress.

M803.806 Processing suspected violations.

VA employees shall report suspected violations of [31 U.S.C. 1352](#), Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, to the SPE/DSPE and the VA Office of the Inspector General.

Subpart M803.9—Whistleblower Protections for Contractor Employees

M803.905 Procedures for investigating complaints.

The Deputy Senior Procurement Executive (DSPE) is the agency's designee for actions required under [FAR 3.905](#) (b), (c), (d) and (e).

M803.906 Remedies.

The DSPE is the agency's designee for actions required under [FAR 3.906](#).

M803.907 Whistleblower protections under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

M803.907-3 Procedures for filing complaints.

(c) A contracting officer who receives a complaint of reprisal of the type described in [FAR 3.907-2](#) shall forward it to the Office of Inspector General in accordance with HCA

procedures.

M803.907-6 Remedies and enforcement authority.

(d) The DSPE is the agency's designee for actions required under [FAR 3.907-6](#).

M803.908 Pilot program for enhancement of contractor employee whistleblower protections. [Reserved]

Subpart M803.10—Contractor Code of Business Ethics and Conduct

M803.1003 Requirements.

(b) *Notification of possible contractor violation.* Upon notification of a possible contractor violation of the type described in [FAR 3.1003\(b\)](#), the contracting officer shall, in accordance with HCA procedures, coordinate the matter with the supporting OGC and Office of Inspector General.

(c) When using FAR clause [52.203-14](#), Display of Hotline Poster(s), the contracting officer shall insert the following information in paragraph (b)(3):

Department of Veterans Affairs
VA Inspector General Hotline (53E)
810 Vermont Ave., NW Washington, DC 20420
E-mail vaoighotline@va.gov
FAX (202) 495-5861

The Contractor may download the VA Inspector General Hotline Poster from the following website: <http://www.va.gov/oig/pubs/20130625-hotline-poster.pdf>.

Subpart M803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

M803.1103 Procedures.

(a) The contracting officer shall use the “VA Contractor Non-Disclosure Agreement” in [Appendix A](#) when a contractor's employees, or employees of a subcontractor of any tier, are required to sign a non-disclosure agreement in accordance with [FAR 3.1103\(a\)\(2\)\(iii\)](#).

SUBCHAPTER A—GENERAL

PART M804—ADMINISTRATIVE AND INFORMATION MATTERS

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SUBCHAPTER A—GENERAL

PART M804—ADMINISTRATIVE MATTERS

Subpart M804.1—Contract execution

M804.101 Contracting officer's signature.

Contracting Officers may utilize either electronic (digital) or physical (handwritten) signature on contracts, orders, agreements, modifications and supporting documentation. This includes accepting a digital signature(s) from contractors, provided the contracting officer confirms that the signer(s) has authority to bind the contractor. An electronically signed contract action which includes the name of the contracting officer satisfies the typed, stamped, or printed requirement found in FAR 4.101.

M804.103 Contract clause.

HCA's should establish procedures for when the clause at FAR 52.204-1, Approval of Contract, is included in solicitations when approval to award the resulting contract is required above the contracting officer.

Subpart M804.2—Contract Distribution

M804.202-70 Distribution of construction contract files.

(a) In addition to the distribution requirements of FAR 4.201, the contracting officer, as appropriate, should distribute and maintain one executed copy of the documents listed below:

- (1) The original of the performance and payment bonds must be filed and secured electronically.
- (2) Contracts and modifications must be distributed electronically to the contractor and payee office.
- (3) The designated Contracting Officer's Representative must also receive an electronic copy of the signed contract and modifications.

Subpart M804.6—Contract Reporting

M804.602 General.

Detailed specifications of Federal Procurement Data System – Next Generation (FPDS-NG) reporting requirements are contained in the Frequently Asked Questions (FAQ) document available at <https://www.fpds.gov>.

M804.604 Responsibilities.

(a)(1) HCAs are responsible for performing quarterly verification of FPDS data. The FedDataCheck tool will generate a sample of VA awards for FPDS Verification & Validation (V&V) upon the completion of each quarter. The HCA must certify the contract action reports (CARs) no later than 30 business days after the end of the quarter.

(2) HCAs are responsible for submitting an annual certification that the FPDS data has been reviewed for completeness and accuracy. As stated previously, the FedDataCheck tool will generate a sample of VA awards for FPDS V&V annually. Each HCA must furnish their certification by December 15 for the previous fiscal year to the Enterprise Acquisition System Service (EASS).

(b)(1) Contracting Officers (CO) are responsible for reporting awards, when the award process was conducted using other than micro-purchase procedures and the value is greater than the micro-purchase threshold (MPT). In addition, VA requires FPDS-NG reporting for all calls and orders valued at or below the MPT, that are awarded under an Indefinite Delivery Vehicle (IDV) by a contract specialist and or ordering officer (OO). Modifications to existing contract awards must also be reported, regardless of dollar amount.

(2) The contracting officer must confirm the CAR prior to release of the contract award and complete the CAR in FPDS within three business days after contract award. CARs in a draft or error status in FPDS are not considered complete.

M804.605 Procedures.

(a) Uniform Procurement Instrument Identifier (PIID) numbering. Contracting officers must use the uniform PIID numbering requirements for procurement instruments reported to FPDS, regardless of dollar threshold. VAAM M804.1603 provides numbering requirements and lists the elements of a VA PIID and Supplemental PIID (SPIID).

(b) Unique entity identifier (UEI). Prior to contract award, the contracting officer must: (1) Verify that the UEI corresponds to the successful offeror's name and address as listed in the System for Award Management (SAM); and (2) ensure that contract award documents and related financial transaction data record the actual UEI contractor information and NOT "generic" information, to prevent improper payments. The UEI should be verified along with the contractor's Commercial and Government Entity Code (CAGE) Code listed in SAM.

(c) Office codes. Use the Activity Address Code (AAC), as defined in FAR 2.101, assigned to the issuing contracting office as the contracting office code, and use the AAC assigned to the program and or funding office providing funding for the contract action, as the program and or funding office code.

M804.606 Reporting data.

(a) Contracting officers must choose the correct FPDS format to report the award of a new contract, agreement, or order, valued above the micro-purchase threshold (MPT), regardless of solicitation process used (e.g., Indefinite-Delivery Contract (IDC), purchase order, basic ordering agreement (BOA), blanket purchase agreement (BPA)). Any modification to these contract actions that change previously reported contract action data, regardless of dollar value, must also be reported. Not every data element is addressed here, users should consult the FPDS Data Element Dictionary, located at <https://www.fpds.gov>, for more complete descriptions and examples. This section uses data field names based on what is shown to the user while entering data in FPDS.

(1) FPDS Entry – Contract Identification Information.

(i) Enter the new contract, agreement, or order number in the “Procurement Instrument Identifier” data field (1A).

(ii) If the action is a BPA awarded against a Federal Supply Schedule (FSS), enter the FSS contract number in the “Referenced IDV ID” data field (1C).

(iii) If the action is a BPA call awarded against a BPA, enter the BPA number in the “Referenced IDV ID” data field (1C).

(iv) If the action is a modification, enter the contract, agreement, or order number in the “Procurement Instrument Identifier” data field (1A) and the modification number in the “Modification Number” data field (1B).

(v) If the award is associated with a solicitation, enter the solicitation number in the “Solicitation ID” data field (1E).

(vi) If the award is associated with an initiative identified in FPDS (e.g., American Recovery and Reinvestment Act), chose the appropriate value in the “Treasury Account Symbol Initiative” data field (6SC).

(2) Monthly FPDS Express Reporting. The Ordering Officer (OO) must provide a monthly report to the CO, that includes a list of orders placed, number of actions, the amount obligated/deobligated, the award/order date, source of data, and program office description. When Express Reporting is used, the CO must submit a contract action report (CAR) with the information obtained from the OO’s monthly report. The CAR must be submitted not later than the 10th day of the following month via the contract writing system, using Express Reporting capabilities for consolidated multiple action reports. The CO is responsible for verifying the report of orders placed by the OO to the FPDS entries to ensure accurate reporting into FPDS.

M804.606-70 Reporting Procurement Administrative Lead Time (PALT) data.

(a) PALT is defined as "the time between the date on which an initial solicitation for a contract or order is issued and the date of the award of the contract or order."

(b) For award of a new contract, purchase order, task and or delivery order, or BPA Call valued above the SAT, contracting officers must include the *solicitation issuance date*, regardless of whether the new award: Was required to be advertised (i.e., posted on the applicable Governmentwide point-of-entry, etc.); Is an order under a single-award IDC; or, Is an award that was not competed. The following guidance is provided for determining the date on which an initial solicitation is issued:

(1) When issuing a draft solicitation for the purpose of seeking input from interested parties, to assist the Government in developing its *final solicitation* --- the "*initial solicitation*" date is the date on which the *final* solicitation seeking offers, bids, or proposals is issued.

(2) An award(s) resulting from unsolicited proposals, the "*initial solicitation*" date is the date on which the Government notifies the offeror of proposal acceptance.

(3) Orders placed against IDCs, where pricing is based on pre-priced line items included in the IDC, and no elements of the order's delivery or performance require negotiation, the "*initial solicitation*" date is the date of the award of the order. NOTE: When the CO requests a proposal, that may lead to the negotiation of cost or technical elements of the proposed order, the "*initial solicitation*" date is the date the request was forwarded to the contractor.

(4) An award of a contract under a Broad Agency Announcement (BAA), the "*initial solicitation*" date is the date when a final combined synopsis and or solicitation is issued, except:

(i) For two-step BAAs, including white paper submissions for review, selection, and subsequent request for full proposals, the "*initial solicitation*" date is the date when the Government signs the proposal request.

(ii) Under BAAs with calls, the "*initial solicitation*" date is the date when the individual call is issued.

(iii) For open BAAs, when white papers and or proposals are accepted for review over an extended period (typically open for a year or longer), the "*initial solicitation*" date is either the date when the Government signs a proposal request (white papers) or the date on which the proposal is submitted, whichever is earlier.

Subpart M804.8—Government Contract Files

M804.800 Scope of subpart.

This subpart proposes a contract file format standard for all contracts that exceed the MPT. This subpart may also be applied to purchases at or below the MPT. This standard is to ensure that the documentation in the file complies with FAR 4.801(b)(1) and FAR 4.802(c) requirements.

M804.802 Contract files.

(a)(1) All official procurement files must contain complete documentation to constitute a complete history of the acquisition (including payment responsibilities) and any subsequent actions taken by the contracting office. Contract files must be maintained electronically, unless otherwise determined in writing, by the Senior Procurement Executive (SPE) to be prohibitively burdensome. All files must be maintained in accordance with the processes and procedures applicable to the contract writing system used (i.e., Electronic Contract Management System (e-CMS) -- Automated Acquisition Management Solution (AAMS), Integrated Financial and Acquisition Management System (iFAMs), etc.). Actions placed by an Ordering Officer (OO) must be contained in an electronic file. The Contracting Officer should complete and include the applicable contract file checklist.

(b) Contracting officer responsibilities include:

(1) Placing all applicable documentation included at FAR 4.802 and 4.803 in the contract file and organize the file in the format as set out in each individual contracting activity's contract file standard.

(2) Individuals (e.g., Contracting Officer and or Contract Specialist) creating documents relating to the contract must include those documents in the official contract file on behalf of the contracting officer. Other members of the acquisition team may be responsible for the maintenance and archival of any delegated responsibilities (e.g., contract administration and delegated contract administration function) according to prescribed contracting activity policies and procedures.

(i) Include an index or checklist identifying the location of any documentation contained in the contract file when such identification is not already prescribed by policy. Contract writing systems that include an electronic file index or checklist can be used if available. Attachment [M804-C](#), Sample Contract File Documentation Template is provided for reference.

(ii) Identify in a clear and logical manner, within the contract file, any documentation maintained in another location.

(iii) Comply with applicable file and document naming convention and or nomenclature requirements.

(3) When responsibility for a contract transfer from one contracting officer to another contracting officer (e.g., employee departure, transfer of assignments, or redelegation of contract administration authority (intraoffice or interoffice)) occurs--

(i) The successor contracting officer must review the files being transferred. The purpose of the review is to identify any issues with the contract file (e.g., missing, or incomplete documentation or information).

(ii) The successor contracting officer must attempt to resolve any issues identified during their review of the transferred files. The successor contracting officer should write a memo-to-file that documents any issues with the contract file that were not able to be resolved as part of the transfer.

(c) HCA responsibilities. HCAs consistent with their delegated authorities may develop standard operating procedures (at their discretion) that discuss, at a minimum, the following:

(i) The different types of files identified in FAR 4.801(c) along with any other files that are to be established (e.g., unsolicited proposals).

(ii) The location where file documentation is to be stored (e.g., an electronic contract filing system, another official system of record, or some type of combination thereof). If file documentation must be stored in different locations, the rationale for the need (e.g., separation of classified and unclassified documentation) and medium (e.g., paper) to be used.

(iii) The use of a checklist or index that includes the citation of the authority for retaining a document.

(iv) The filing and document convention/nomenclature to be used.

(v) The content, access, and other applicable requirements for contracting officer representative (COR) contract files; and

(vi) The internal controls (e.g., quarterly review by the contracting activity) to be used for ensuring compliance with FAR and VAAM requirements.

M804.804 Closeout of contract files.

(a) A contract should not be closed out until all terms and conditions of the contract have been satisfied by the contractor and the Government. Additionally, contract

actions in active litigation or appeal; and or terminated contract actions, cannot be closed out until all pending actions have been completed. In situations that are beyond the contracting officer's control, where necessary administrative actions are required by others (e.g., cognizant audit agency, contractor, etc.), the contracting officer should maintain close liaison with these entities to ensure that the necessary actions are not unduly delayed and are completed.

M804.804-5 Procedures for closing out contract files.

(a) Contracting Officer Responsibilities Upon Evidence of Physical Completion. Upon receipt of evidence of physical completion of a contract, the contracting officer must enter the status of “physically complete” (or similar) into the contract writing system applicable to the contract.

(1) For closeout of a firm fixed price contract or order with a total contract value under the SAT, contracting officers must confirm:

(i) All deliverables have been received, inspected, accepted or services performed, and the final invoice paid; and

(ii) There are no complexities involved with the contract or order. Complexities, for the purpose of this section, are defined as: rights in data, property, patent, trademark or copyright, disputes, terminations, equitable adjustments, or any potential legal concern.

(2) Contracts for supplies are considered automatically closed once all deliverables have been received, inspected, accepted, and the final invoice paid.

(3) Contracts for services are considered automatically closed when all deliverables have been received, the final invoice paid and there has been no activity (no invoices, vendor communication, etc.) for six months.

(b) Contracting Officer Responsibilities To Reconcile Financial Balances of Physically Completed Contracts.

(1) Upon receipt of evidence of physical completion of a contract (including those contracts using simplified acquisition procedures), the contracting officer must determine if any outstanding financial balance(s) exist.

(2) Any outstanding balances (e.g., through discussing final billings with contractors, descoping, deobligating funds, cancelling the contract in whole or in part, or terminating the contract in whole or in part, as applicable). The contracting officer must then take the necessary corrective action(s) to resolve such financial balances.

(3) A Contract Completion Statement may be utilized to satisfy the requirements of FAR 4.804-5(b). See Attachment [M804-A](#), Sample Contractor's Closing

Statement; or a Contractor's Release of Claims, Attachment [M804-B](#), Contractor's Release of Claims. The form or statement must be retained in the official contract file.

(c) Contracting Officers are required to report contract closeouts to FPDS.

(1) Physically complete firm-fixed price contracts or orders under the SAT, with no complexities, do not require a closeout modification, but must be reported to FPDS using the closeout button functionality. If for some reason a contract closeout modification was issued under these physically complete firm fixed price contracts or orders under the SAT, with no complexities, then the contracting officer must report the modification to FPDS using 'Closeout' under the 'Reason for Modification' drop-down instead of using the closeout button.

(2) Contract modifications issued to close out the contract must be reported to FPDS using 'Closeout' under the 'Reason for Modification' drop-down (NOTE: Closeout modifications may also serve multiple purposes such as deobligation of final funds, finalization of indirect cost and or overhead rates, transfer of property, settlement of disputes, etc., but the 'Closeout' reason for modification should be used). Closeout modifications are intended to represent the last activity under a contract and are not easily corrected in FPDS, therefore contracting officers must take extra care when reporting these actions and must thoroughly review the contract action report(s) before approving them.

(d) Contracting Officers must approve FPDS contract action reports for closeout modifications at the same time the modification is signed.

M804.805 Storage, handling, and disposal of contract files.

(a) Contracts and order files will be retained and disposed of as authorized by appropriate agency record control schedules. In no case may the files be destroyed before the timeframes specified in the applicable FAR subpart.

Subpart M804.9—Taxpayer Identification Number Information

M804.904 Reporting payment information to the IRS.

The VA Office of Financial Services reports to IRS on payments made for services performed and or supplies received, pursuant to 26 U.S.C. 6041 and 6041A and implemented in 26 CFR. To assist the Office of Financial Services in reporting to the IRS, all obligating documents sent to Finance (e.g., purchase, delivery, or task orders; contracts; or certified invoices) must indicate the contractor's organizational structure (e.g., corporation, or partnership) and taxpayer identification number (TIN).

Subpart M804.10—Uniform Use of Line Items

M804.1000 Scope of subpart.

The subpart identifies agency-specific requirements associated with the capabilities of the contract writing system(s) and proposes best practices and examples that can be used when establishing line items.

M804.1001 Policy.

The requirement for the uniform use of line items apply to solicitations, contracts, orders, and agreements that include pre-priced supplies or services, including amendments, modifications and change orders to such documents. Pursuant to FAR 4.1001, line items *“are established to define deliverables or organize information about deliverables. Each line item describes characteristics for the item purchased, e.g., pricing, delivery, and funding information.”*

M804.1003 Establishing line items.

The severable or non-severable nature of a requirement influences the contract line item numbering (LIN) structure and must be considered in determining the appropriate use of accounting classifications and their assigned accounting classification reference numbers. Severable services are typically recurring during a specified period. Non-severable deliverables typically have a delivery date for products or a completion date for tasks. It is important that financial managers and contracting officers evaluate severability on a case-by-case for each contract action. Consideration must also be given to the chosen unit of measure, on the administration, funding, and payment method (FAR Part 37.106). Contracting officers should seek legal advice when the severable or non-severable nature of a requirement or LIN is difficult to discern and document the basis for funding decisions in the contract file. Contracting officers must always establish a separate line item when options are contemplated.

(a)(1) Solicitations and contracts must establish line items that comply with FAR Part 4.1003, and may include any of the following characteristics:\

(i) Are “separately identifiable.” For purchase of supplies, any item that has its own identification (e.g., national stock number (NSN), item description, manufacturer's part number) is considered separately identifiable and should be listed as a separate line item in the Schedule. For service contracts, “separately identifiable” means that there is “no more than one statement of work or performance work statement.”

(ii) Have a single unit price or total price (except when the items or services are acquired on a cost-reimbursement contract). Cost type line items must not include unit prices, however, must contain the appropriate elements in

accordance with FAR Part 16. Not separately priced (undefinitized) line items must be so labeled.

(iii) Have a single accounting classification citation. (NOTE: A line item may have more than one accounting classification citation; also, the same accounting citation can apply to more than one line item).

(iv) Have a separate delivery schedule or destination. When deliverables identified in the contract Schedule do not have separate delivery schedules, periods or places of performance or other separately-identifiable elements as stated in FAR 4.1003, COs are not required to establish a line item for such a deliverable. COs should use their discretion to determine whether to establish separate line items for all or some of the award deliverables.

(A) Supplies: Quantities must match the actual count of the supplies to be delivered, e. g., if more than one delivery is expected, the quantity cannot be "1."

(B) Services: Quantities must match the frequency with which performance will be reviewed, and on fixed-price line items, payment made. For example, a contract with a twelve-month period of performance should have a quantity and unit of measure suited to how the contract will be managed. If the intent is to review, accept, and pay for the services monthly, then the quantity should be 12, with a unit of measure such as "Months" or "Lots." If the intent is to review, accept, and pay for the services quarterly, then the quantity should be 4, with a unit of measure such as "Lot". If the quantity used is 1, then no payment for delivery can occur until the end of the period of performance. Services with tangible deliveries, such as repairs, should be structured like supply line items.

(v) Have single or multiple contract pricing types (e.g., a hybrid contract where deliverables have different contract types, e.g., Cost-Plus-Fixed-Fee (CPFF) and Firm-Fixed-Price (FFP)).

(vi) FAR Part 4.1005-1(a)(1) permits agencies to establish Line item or subline items in accordance with agency procedures. Organizations that place orders from the Supply Chain Master Catalog (SCMC), must include the elements included in Attachment [M804-D](#), Supply Chain Master Catalog Line Item Detail Requirements.

M804.1003-70 Numbering procedures.

All line items are created and modified at the requisition stage, which then carry forward to the solicitation/award stage. Since the funds are committed under the requisition line items, the requesting office must coordinate with the CO while they are first creating the requisition to ensure the line items are properly established for the

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solicitation/award that will eventually be created from that requisition. (NOTE: the FAR allows for the same accounting code to be entered on multiple line items. When this happens, the requesting office will add the same accounting code for each line item and ensure the amount of funding matches each line item total). This structure will carry forward from the requisition to the solicitation/award stage.

If the CO determines the appropriate line item structure for the solicitation/award is different than the requisition line items, COs must coordinate the necessary changes with the requesting office to modify the requisition line item(s); this must be done prior to creating the solicitation/award.

(a) Line items must consist of either four numeric digits, 0001 through 9999, or five numeric digits, 00001 through 99999, as permissible by the applicable contract writing system (i.e., Electronic Contract Management System (e-CMS) -- Automated Acquisition Management Solution (AAMS), Integrated Financial and Acquisition Management System (iFAMs), etc.). Each line item must have a unique number that cannot be used for another line item within the contract. The item numbers must be sequential but need not be consecutive. The contract line item number must be the same as the solicitation line item number, unless there is a valid reason to use different numbers. For example, FAR 4.1007 and the clause at FAR 52.204-22 allow offerors to propose an alternative line item structure when such changes provide economic or administrative advantages to the Government. Once a line item number has been assigned, it must not be assigned to another, different, contract line item in the same contract.

(b) Line items indicating options (e.g., option years, ordering periods), should relate to the applicable existing line item. For example, the first numerical digit of an option line item would be the number of the option itself (for example "1" for year 1, "2" for year 2 and so on); the remaining digits would be the same as the line item it is referring to. The below example illustrates the line item numbering for options, using five digit numbering.

Line item	Description
00001	Base Period
00002	Base Period - Maintenance and Repairs
00003	Base Period - Construction
01001	Option Year 1 - Period
01002	Option Year 1 - Maintenance and Repairs
01003	Option Year 1 - Construction
02001	Option Year 2 - Period
02002	Option Year 2 - Maintenance and Repairs
02003	Option Year 2 - Construction

M804.1004 Establishing subline items.

FAR 4.1001 (b) allows agencies to subdivide a line item into separate subline items to ease administration. However, all funding must be provided at the line item level.

M804.1004-70 Subline Numbering procedures.

(a) Deliverable subline items. May be established for related items that are similar, except for minor variances. Variations include, but are not limited to size or color, accounting classification, delivery dates, period, or place of performance; packaging and handling, and items separately identified at the time of shipment or performance. Use alpha characters only for deliverable subline items. Defaults start with AA, running through ZZ. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC. Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC. Do not use the letters I or O as alpha characters.

(b) Informational subline items. May be established to identify information that relates directly to the line item (e.g., parts of an assembly or parts of a kit); or to identify multiple accounting classification citations assigned to a single contract line item. Use alpha-numeric or numeric characters, or a combination thereof, for informational subline items only. Defaults may start with A1 or 01. For example, if the contract line item number is 0001, the subline item numbering could start with either 000101 or 0001A1. Informational subline items must be included within the line item description, not the quantity or price sections.

(c) If a contract line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If an offeror separately prices these functions, the contracting officer may establish separate subline items for the functions; however, the separate subline items must conform to the requirements of this section.

(d) Subline items structured to identify different accounting classifications for identical items and or delivery schedule, must be established for each subline item, not the contract line item.

M804.1004-71 Contract exhibits and attachments numbering.

(a) Use of exhibits.

(1) Identify exhibits individually.

- (2) Each exhibit must apply to only one contract line item or subline item.
- (3) More than one exhibit may apply to a single contract line item.
 - (i) Separately priced. When data are separately priced, enter the price in contract schedule.
 - (ii) Not separately priced. Include prices in a priced contract line item or subline item.

- (4) The contracting officer may append attachments to exhibits if the attachment does not identify a deliverable requirement that has not been established by a contract line item or subline item or exhibit line or item.

(b) Numbering exhibits and attachments.

- (1) The criteria for establishing exhibit line items are the same as those for establishing subline items.
- (2) Use alpha or numeric characters to identify exhibits. The alpha characters must be either single or double capital letters. Do not use the letters I or O.
- (3) Once an identifier has been assigned to an exhibit, do not use it on another exhibit in the same contract.
- (4) If the exhibit has more than one page, cite the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number on each page.
- (5) Use numbers to identify attachments.

(c) Numbering exhibit line items.

- (1) The first position or the first and second position contain the exhibit identifier.
- (2) The third and fourth positions contain the alpha or numeric character serial numbers assigned to the line item when using a double letter exhibit identifier. The second, third and fourth positions contain the alpha or numeric character serial numbers assigned to the line item when using a double letter exhibit identifier.
- (3) Exhibit line item numbers must be sequential within the exhibit.
- (4) Examples.

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- (i) Two-position serial number for double letter exhibit identifier.

<u>Cumulative No. of Line Items</u>	<u>Serial Number Sequence</u>
1-33 34-67; et. al.	01 thru 09, then 0A thru 0Z, then 10 thru 19, then 1A thru 1Z, et. al.

- (ii) Three-position numbers.

<u>Cumulative No. of Line Items</u>	<u>Serial Number Sequence</u>
1-33 34-67; et. al.	001 thru 009, then 00A thru 00Z, then 010 thru 019, then 01A thru 01Z, et. al.

Subpart M804.11—System for Award Management

M804.1103-70 Procedures.

Contracting officers must use the SAM database as the primary source of contractor information for contract award and administration.

(a) Unless one of the exceptions to registration in SAM applies (see FAR 4.1102), the contracting officer must not award a contract to a prospective contractor who is not registered in SAM. If no exceptions are applicable, and the need of the requiring activity allows for a delay in award, see FAR 4.1103(b).

(b) When deciding to exercise an option, or at any other time before issuing a modification other than a unilateral modification making an administrative change, ensure that—

- (1) The contractor's record is active in the SAM database; and
- (2) The contractor's UEI, CAGE code, name, and physical address are accurately reflected in the contract document.

(c) At any time, if the UEI, CAGE code, contractor name, or physical address on a contract no longer matches the information on the contractor's record in the SAM database, the contracting officer must process a novation or change-of-name agreement, or an address change, as appropriate.

Subpart M804.13—Personal Identity Verification

M804.1301 Policy.

(a) Homeland Security Presidential Directive-12 (HSPD-12), entitled, "Policy for a Common Identification Standard for Federal Employees and Contractors," was issued to enhance security and reduce identity fraud related to contractor physical access to

Federally-controlled facilities and or logical access to Federally-controlled information systems.

(b) The requirements of HSPD-12 apply to all solicitations, contracts, or orders for services, including services incidental to supply contracts and orders where the contractor will require routine, recurring, or continuous physical access to VA controlled facilities and or logical access to VA controlled information systems.

M804.1303 Mandatory clause - FAR 52.204-9, Personal Identity Verification Requirements.

Insert the clause at 52.204-9, Personal Identity Verification Requirements, in solicitations and contracts when it is determined that contractor (including subcontractor) employees will require staff-like access to VA Sensitive but Unclassified (SBU) information (electronic or paper-based), VA facilities or information systems or assets that process, store, or contain SBU, wherever the location, and irrespective of ownership of the information system or infrastructure in use.

Subpart M804.16—Unique Procurement Instrument Identifiers

M804.1600 Scope of subpart.

This subpart prescribes procedures, guidance, and instruction for assigning Unique Procurement Instrument Identifiers (PIID) in all solicitations, contracts, and related instruments.

M804.1603 Procedures.

(a) *Elements of a PIID.* VA issued PIIDs may be up to seventeen characters in length. Use only alpha-numeric characters, as prescribed in FAR 4.1603 and this subpart. Do not use the letter I or O in any part of the PIID, or special characters (spaces, dashes, or hyphens). NOTE: The prevailing guidance for creating a PIID within VA is provided in the contract writing system specific to the applicable organization. The characters must be positioned as follows:

(1) *Positions one through six.* The first six characters of the PIID represent the office issuing the award; this code is known as the activity address code (AAC). This code will be reported in FPDS in the contracting agency office ID field and is also the issuing office information that appears on the contract award document. Every VA AAC begins with the Department identifier – 36, followed by a letter representing the component. The remaining three characters of the AAC are left to the components discretion.

(2) *Positions seven and eight.* A two-digit numeric code that is the last two digits of the fiscal year in which the PIID is awarded. The fiscal year is the fiscal year during which the contract action is awarded and or issued (i.e., the date signed), it

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does not represent the effective date. A contract signed on September 30, 2022 (FY22), for example, with an effective date of October 4, 2022 (FY23), would use '22' in the PIID because the award was signed in FY22.

(3) *Position nine.* A one-digit alphabetic code, in Table B below, identifies the type of procurement instrument (e.g., agreement, sealed bidding, contract, etc.).

(4) *Positions ten through seventeen.* Components may use the remaining characters of the PIID in whatever way they choose, however, the PIID in its entirety must be exactly 17 characters long and must be unique.

(5) *Illustration of the PIID.* An example of a 17-character PIID is illustrated in Table A below. The PIID 36C10122B00011234 identifies an invitation for bid issued by the Department of Veterans Affairs, VA Center for Acquisition Innovation, Washington, D.C. in fiscal year 2022.

Table A: Elements of a PIID

Position	Identification	Code
1-6	Agency & Organizational Identifier	36C101
7-8	Fiscal Year	22
9	Type of Procurement Instrument	B
10-13	4 Position Serial Number	0001
14-17	As determined by the Component	1234

Table B: Coding for Types of Procurement Instruments (Position Nine)

Instrument	Letter
Blanket Purchase Agreements	A
Invitation for bids	B
Contracts of all types except indefinite delivery contracts (see FAR 16.5).	C
Indefinite delivery type contracts (including Federal Supply Schedule, Government-wide acquisition contracts (GWACs), and multiple-agency contracts)	D
Reserved by FAR for future federal Government-wide use	E
Task or delivery orders or calls under -- indefinite-delivery contracts (including Federal Supply Schedules, Government-wide acquisition contracts, and multi-agency contracts), blanket purchase agreements or basic ordering agreements. See "N" below for orders issued under procurement instruments designated for internal VA use only	F
Basic ordering agreements	G
Agreements, including basic agreements and loan agreements. Use for cooperative agreements when a PIID formatted number is assigned, but excluding blanket purchase agreements, basic ordering agreements, and leases. Do not use this code for contracts or agreements with provisions for orders or calls	H

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In accordance with FAR 4.1603 do not use this letter	I
Reserved for future Federal Governmentwide use.	J
FPDS Express Reporting (consolidated multiple action reports) may be used for a vendor when it would be overly burdensome to report each action individually	K
Lease Agreements: Use for leasing real property, supplies, or equipment to include enhanced-use leases, out leases, etc., except those under the authority of 38 USC 8153, or those captured in Memorandums of Understanding (MOU), Memorandums of Agreements (MOA), and VA and or DoD interagency agreements	L
MOU/MOA: Use for all MOUs and MOAs and Interagency Agreements	M
Delivery or Task Orders (Internal): Use when placing orders under internal VA IDVs to include VA FSS contracts; BPA against VA FSS contracts; or BOAs, including regional, VISN-wide, or station-level contracts	N
In accordance with FAR 4.1603 do not use this letter	O
Purchase Orders: Use for purchase orders described in FAR 13. (Assign V if numbering capacity of P is exhausted during a fiscal year)	P
Use for Request for Quote, Request for Information or Sources Sought when placing an announcement in Contract Opportunities for informational purposes (assign "U" if numbering capacity of "Q" is exhausted during fiscal year).	Q
Request for Proposal: Use when the procedures under FAR 15 are followed, including those combined with FAR 12	R
Sales Contracts: Use for sale of commodities or services, to include excess and sale of space under 38 USC 8153	S
Rehabilitation, and Education Services: Reserved for use by Veterans Benefits Administration contracting activities	T
See "Q", request for quotation	U
See "P" purchase orders	V
Reserved by FAR for future federal Governmentwide use	W
Reserved by FAR for future federal Governmentwide	X
Imprest fund use	Y
Reserved by FAR for future federal Government-wide use	Z

(b) *Supplementary Procurement Instrument Identifiers (SPIIDs)*. SPIIDs must be used in conjunction with the PIID to identify the following:

(1) *Amendments to Solicitations*. Amendments must be assigned a four-position numeric serial number, always sequentially beginning with 0001.

(2) *Modifications to Contracts, Agreements, BPA Calls, and Orders*. Modifications to all awards (including contracts, agreements, BPA Calls, purchase orders, and task and or delivery orders) must be numbered sequentially with a six-position

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alphanumeric serial number beginning with either A00001 (modifications issued by other than the procuring office) or P00001 (modifications issued by the procuring office).

SUBCHAPTER B—ACQUISITION PLANNING

PART M805—PUBLICIZING CONTRACT ACTIONS

Subpart M805.1—Dissemination of Information

Sec.
M805.101 Methods of disseminating information.

Subpart M805.5—Paid Advertisements

M05.502 Authority.

Subpart M805.70—Congressional Notification

M805.7001 Congressional notification procedures for contract actions.

Attachment

[M805-A](#), Contractor Award Notification

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PART M805—PUBLICIZING CONTRACT ACTIONS

Subpart M805.1—Dissemination of Information

M805.101 Methods of disseminating information.

(b)(4) (iii). Advertisements published in newspapers must be under proper written authority in accordance with [M805.502](#).

Subpart M805.5—Paid Advertisements

M805.502 Authority.

Newspapers. The authority to approve the publication of paid advertisements in newspapers is vested in the head of the contracting activity (HCA).

Subpart M805.70—Congressional Notification

M805.7001 Congressional notification procedures for contract actions.

(a) Contracting officers shall provide notification information (including options and modifications) to the VA Office of Congressional and Legislative Affairs (OCLA) in sufficient time for the agency to announce it by 5:00 p.m. Eastern Time (ET) on the day of award. Agencies shall not release information on awards before the public release time of 5 p.m. ET.

(b) Email Congressional notifications to the OCLA mailbox located at ocla-contracting@va.gov. The subject line should read “Congressional Notification – (Title of the project or item purchased): e.g., “Congressional Notification – Sterilizer maintenance.”

(c) Use Attachment [M805-A](#), Contract Award Notification, to submit the required notification to OCLA. Make sure the contract award date is included in block C.

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SUBCHAPTER B—ACQUISITION PLANNING

PART M806—COMPETITION REQUIREMENTS

Subpart M806.1—Full and Open Competition

Sec.

M806.101-70 Publication and posting requirements guidance for sole source actions.

Subpart M806.2—Full and Open Competition After Exclusion of Sources

M806.202 Establish or maintaining alternative sources.

Subpart M806.3—Other Than Full and Open Competition

M806.302 Circumstances permitting other than full and open competition.
M806.302-7 Public Interest.
M806.303 Justifications.
M806.303-170 Requirements—additional procedures.
M806.303-2 Content.
M806.303-270 J&A support documentation.
M806.304 Approval of the justification.
M806.304-70 Approval of the justification for repetitive sole source awards to the same SDVOSB/VOSB.

Subpart M806.5—Advocates for Competition

M806.502 Duties and responsibilities.

Attachments

[M806-A](#), Template for Justification and Approval (J&A) – Other Than Full and Open Competition

[M806-B](#), J&A Publicizing and Posting Requirements Matrix

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SUBCHAPTER B—ACQUISITION PLANNING

PART M806—COMPETITION REQUIREMENTS

Subpart M806.1—Full and Open Competition

M806.101-70 Publication and posting requirements guidance for sole source actions.

See Attachment [M806-B](#), Justification and Approval (J&A) Publicizing and Posting Requirements Matrix for guidance on publicizing and posting requirements when conducting sole source awards.

Subpart M806.2—Full and Open Competition After Exclusion of Sources

M806.202 Establish or maintaining alternative sources.

(a) VA may use the authority in [FAR 6.202](#) to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) (see [FAR subpart 1.7](#)) and documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(1) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(2) The circumstances that make it necessary to exclude the particular source from the contract action, including—

(i) The reasons for the lack of or potential loss of alternative sources (e.g., the technical complexity and criticality of the supplies or services); and

(ii) The current annual requirement and projected need for the supplies or services.

(3) Whether the existing source must be totally excluded from the contract action or whether a partial exclusion is sufficient.

(4) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future.

(5) When [FAR 6.202\(a\)\(1\)](#) is the authority, the basis for—

(i) The determination of the effect on future competition; and

(ii) The determination of the effect on reduced overall costs, including, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations.

(6) When [FAR 6.202\(a\)\(2\)](#) is the authority—

(i) The current annual and mobilization requirements for the supplies or services, citing the source of, or the basis for, the data;

(ii) A comparison of current production capacity with that necessary to meet mobilization requirements;

(iii) An analysis of the risks of relying on the present source; and

(iv) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

Subpart M806.3—Other Than Full and Open Competition

M806.302 Circumstances permitting other than full and open competition.

M806.302-7 Public interest.

(c)(1) A written determination to use this authority must be made by the Secretary. This authority may not be delegated. The contracting officer must prepare a D&F in accordance with [FAR subpart 1.7](#) and a justification in accordance with [FAR 6.303](#). The contracting officer must submit the D&F and justification, to include the anticipated contract award date, through the following individuals in order to obtain the signature by the Secretary:

(i) Contracting Activity Advocate for Competition.

(ii) Head of the contracting agency (HCA).

(ii) VA Advocate for Competition.

(iii) Senior Procurement Executive (SPE).

(2) Congressional notification is required 30 days prior to expected contract award. The Agency Advocate for Competition is responsible for preparing the congressional notification and notifying the contracting officer. The contracting officer may not award the contract until notified by the Agency Advocate for Competition.

M806.303 Justifications.

M806.303-170 Requirements—additional procedures.

(a) Justification and Approval (J&A). The J&A must be submitted with any required acquisition plan and other acquisition request documents. The approved J&A must be documented and filed in the electronic contract writing system.

(1) Justifications for acquisitions at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or other acquisition request document. Justifications for acquisitions in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with [FAR 6.303](#). A template at Attachment [M806-A](#), Template for Justification and Approval (J&A) for Other Than Full and Open Competition is provided for agency use. This template may be tailored, and HCA specific approved templates are authorized for use.

(2) Justifications for orders to be placed under Federal Supply Schedule (FSS) contracts that limit consideration of contractors shall comply with [FAR 8.405-6](#).

(b) Justifications made under the authority of [FAR 6.302-7](#) shall only be made on an individual basis.

M806.303-2 Content.

(b) See Attachment [M806-A](#), Template for a Justification and Approval (J&A) for Other Than Full and Open Competition. The template contains specific certification language that must be included for the review and approval authorities as required by [FAR 6.303-2](#) and in accordance with the internal agency guidance outlined in [M806.304](#) (see Table M806.1).

M806.303-270 J&A support documentation.

(a) The head of the contracting activity (HCA) shall ensure all justification and approval (J&A) packages that exceed \$75 million as delineated at [M806.304-70](#), Table M806.1, contain all the required documentation necessary to support the proposed procurement action. All packages shall include the following basic documents:

(1) VA Form 4265, Concurrence and Summary Sheet.

(2) The J&A document being submitted for approval with signed signature page.

(3) Legal sufficiency determination by the cognizant Office of General Counsel (OGC) as required by the FAR, VAAR, or other policy.

(4) Market research (see [FAR part 10](#), [VAAR part 10](#), and [VA Market Research Guide for Acquisition Teams](#)).

(5) Acquisition planning documentation as required by [FAR part 7](#), and [VAAR part 7](#).

(6) Signed VA Form 2268, Record of Procurement Request Review, as required.

(7) All supporting documentation required by the FAR, VAAR, the VAAM, or acquisition policy for the action being submitted for review and approval.

(8) Other supporting documentation required by local policy to support the procurement document being submitted for approval.

(b) The HCA shall conduct a comprehensive review of the proposed action to ensure—

(1) Document narratives are consistent and adequately support the contracting officer's requested course of action;

(2) The contracting officer's conclusions are sound, logical, and well supported by the facts and supporting documentation;

(3) The package contains all documents required by the FAR, VAAR, VAAM, or other relevant policy;

(4) All required certifications by requirements personnel and all review and approval level coordination, signatures, and approvals have been obtained; and

(5) All packages have been reviewed and coordinated by the Office of Small and Disadvantaged Business Utilization and OGC, when required.

(c) Except in the case of emergency requirements, contracting officers shall ensure documents submitted for executive approval are submitted at least two weeks in advance to allow time for adequate review.

M806.304 Approval of the justification.

(a) Requirements shall not be split to avoid submission of a justification to a higher-level approval authority or to be able to award on a sole source basis under a particular authority or program. For a class justification specified in [FAR 6.304\(c\)](#), the contracting officer must obtain the review, coordination, and approval in writing for all proposed justifications from the same officials as described in Table M806.1.

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(b) Sole source approvals will be conducted using the thresholds at [FAR 6.304](#) and approval authorities and additional review and coordination levels as delineated in the following Table M806.1:

Table M806.1

Proposed Contract Amount Including All Options	Review/Approval Authority	Additional Required Review/Coordination
(1) Not exceeding \$750,000	Contracting Officer per FAR 6.304(a)(1)	Not applicable
(2) \$750,000 but not exceeding \$15 Million	Designated Contracting Activity Advocate for Competition per FAR 6.304(a)(2) . See the list of VA Contracting Activity Advocates for Competition or the Head of the Contracting Activity (HCA) (per FAR 6.304(a)(3)). This authority is not delegable.	Office of Small and Disadvantaged Business Utilization (OSDBU) through the VA Form 2268 review process.
(3) \$15 Million but not exceeding \$75 Million	The Head of the Contracting Activity (HCA) or a designee who is a Senior Executive Service (SES) employee per FAR 6.304(a)(3)(ii) .	Office of Small and Disadvantaged Business Utilization (OSDBU) through the VA Form 2268 review process. Agency Advocate for Competition
(4) Over \$75 Million	Senior Procurement Executive (SPE) per FAR 6.304(a)(4) . This is not delegable.	Not applicable

M806.304-70 Approval of the justification for repetitive sole source awards to the same SDVOSB/VOSB.

Table M806.2 provides the review and approval authority when seeking to award a sole source contract on a repetitive basis concerning the same or similar requirements to the same SDVOSB or VOSB pursuant to [VAAR 819.7007](#) and [819.7008](#). In accordance with [VAAR 819.7007\(e\)](#) and [819.7008\(e\)](#), requirements may not be split.

Table M806.2

Review and Approval Requirements for Repetitive Sole Source Awards to the Same SDVOSB/VOSB

Proposed Contract Amount	Approval/Review Authority	Alternate Approve/Review Authority
(1) Up to simplified acquisition threshold (SAT)	Contracting Officer	Not applicable
(2) Above the SAT to \$750,000	One level above the Contracting Officer and the Office of Small and Disadvantage Business Utilization (OSDBU) through the VA Form 2268 review process.	Not applicable
(3) Over \$750,000 but not exceeding \$5,000,000	Contracting Activity Advocate for Competition and OSDBU through the VA Form 2268 review process.	The Agency Advocate for Competition (see VAAR 806.501).

NOTE: Sole source procurements under the VA Veterans First Contracting Program may not exceed \$5,000,000.

Subpart M806.5—Advocates for Competition

M806.502 Duties and responsibilities.

(b)(2) In accordance with [FAR 6.502](#), each contracting activity advocate for competition (see the list of [VA Contracting Activity Advocates for Competition](#)) must submit an Annual Competition Advocate Report (ACAR) to the VA Advocate for Competition (see [VAAR 806.501](#)), on or before December 10th of each year (or the next business calendar day). The ACAR will be based upon the requirements in [FAR 6.502](#) and any instructions from the VA Advocate for Competition.

SUBCHAPTER B—ACQUISITION PLANNING

PART M808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart M808.004—Use of Other Sources

Sec.
M808.004-1 Category Management Procedures

Attachment

[M808-A](#), Guide to Utilizing GSA D2D Category Management Data

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PART M808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart M808.004—Use of other sources

M808.004-1 Category Management Procedures

(a) Background and definitions

- (1) If the contracting activity is unable to satisfy requirements for supplies and services from the mandatory sources listed in [FAR 8.002](#), [FAR 8.003](#), and [VAAR 819.201](#) (Veterans First Contracting Program), the contracting activity may consider satisfying requirements through the non-mandatory sources listed in [FAR 8.004](#).
- (2) As part of the consideration of non-mandatory sources, contracting activities are encouraged to consider best practices, and the procedures contain herein, of category management to fulfill requirements. Category management, as defined by the Office of Management and Budget (OMB), is “the business practice of buying common goods and services as an enterprise to eliminate redundancies, increase efficiency and to deliver more value and savings from the Government’s acquisition programs.”
- (3) To implement category management, OMB requires agencies to carry out a set of tailored management actions and to provide updates on these management actions to evaluate their progress in bringing common spending under management (SUM). The expected result is more effectively managed contract spending through a balance of Government-wide, agency-wide, and local contracts; cost avoidance; and continued achievement of small business goals and other socio-economic requirements through increased awards to 8(a) and other small disadvantaged businesses, women-owned small businesses, service-disabled veteran-owned small businesses, and small businesses working in HUBZones.
- (4) OMB has directed each agency’s Senior Accountable Official (SAO) to implement category management practices to increase spend to category management solutions, including those designated as Best-in-Class (BIC) or other managed spend (Tiers 1 and 2). [OMB Memo M-19-13](#) identifies that the SAO “shall be the agency’s Deputy Secretary, or equivalent, unless another official is identified by the agency and agreed upon by OMB.”
- (5) Per [OMB Memo M-22-03](#), agencies should boost contracting opportunities for small disadvantaged businesses and other socioeconomic small businesses; establish and implement category management plans consistent with statutory socioeconomic responsibilities and the need to diversify the

agencies' small business supplier base; and not prioritize spending on BIC solutions at the expense of meeting socioeconomic small business goals and providing maximum practicable opportunity to small businesses. Beginning in FY22, there is a Tier 2 Socioeconomic Business measure (Tier 2-SB) that is outlined in greater detail in section [M808.004-1\(b\)\(5\)\(i\)](#).

(b) Procedures

- (1) Acquisition professionals should periodically check the [Acquisition Gateway on Category Management](#) for updated information and guidance. This gateway, managed by the General Services Administration (GSA), has many resources related to category management planning and implementation. The following links¹ are relevant guidance that may be beneficial when developing and implementing category management plans:
 - (i) [VA Plans and Policies](#) (Must be signed in with OMB Max for access)
 - (ii) [Category Management Basics, Governance and Guidance](#)
 - (iii) [Government-wide Category Management Dashboards](#)
 - (iv) [Market Research Prices Paid Portal](#) (Must be signed in with OMB Max for access)
 - (v) [Solutions Finder](#) (Identify shared offering from GSA and other agencies)
 - (vi) [List of Approved BIC Solutions](#)
 - (vii) [Category Management Trainings](#)
- (2) VA acquisition professionals should also reference the Acquisition Knowledge Portal's (AKP)² dedicated page to category management, which includes VA-specific resources and trainings.
- (3) Head of Contracting Activities (HCAs) should work with the VA's Category Management Support Office (CMSO) to develop and submit their annual category management plans and compliance reports.
 - (i) Annual category management plans should follow the agency's category management plan template. Directions and the template for

¹ An active OMB Max account may be required to access some of the referenced links and other related content areas maintained on the GSA Category Management Hallway

² The AKP is accessible only to VA staff on the agency's intranet.

submitting the annual plan are circulated by OMB to each agency and are also housed at a [dedicated planning page](#) on the GSA category management gateway.

- (ii) HCAs should include in the category management plan requirements which will contribute to the agency's overall category management goal.
- (iii) Annual category management plans should also include each HCA's demand management and vendor management plans, to include pre-solicitation and post-award management strategies. HCAs should provide plans that contain overall strategies and processes for their respective organization, not plans for specific contract(s) or solicitation(s).
- (iv) When developing the annual category management plan, HCAs and contracting officers should research opportunities for re-competed requirements to move from unmanaged spend (Tier 0) into potential SUM solutions (Tiers 1, 2, 2-SB and BIC). [Attachment M808-A, Guide to Utilizing GSA D2D Category Management Data](#), includes step-by-step directions on how to pull and analyze category management data from GSA's Data to Decisions (D2D) dashboard to identify possible SUM vehicles for expiring VA-unmanaged spend.
- (v) HCAs should also include in the annual category management plan: 1) existing unmanaged contracts (Tier 0) over \$50 million that are not planned to be moved to SUM (Tiers 1, 2 and BIC) within the next 18 to 24 months; 2) new requirements over \$50 million that are planned for award to unmanaged spend (Tier 0) within the next 18 to 24 months; 3) existing Tier 1 contracts over \$100 million that are not planned to be moved to Tier 2 or BIC vehicles within the next 18 to 24 months; and 4) new requirements over \$100 million that are planned for Tier 1 spend.
- (vi) The list in subpart M808.004-1(b)(3)(v) above reflects a summation of the planned awards that need to be considered as part of the "analysis of alternatives" (AoAs) procedures identified in [OMB Memo M-19-13](#). The dollar threshold, including all options and incentives, for preparing an AoA is \$50 million for planned Tier 0 spending and \$100 million for planned Tier 1 spending. AoAs are critical to ensuring that agencies give serious consideration to BIC and Government-wide solutions. The SAO will include this information as part of the "Opt Out Spending - Analysis of Alternatives" tables on the annual category management plan that is sent from VA to OMB.
- (vii) AoAs for applicable planned awards should be developed by the HCA no less than 18-24 months prior to award and reviewed and approved

by the Chief Acquisition Officer (CAO) and/or Senior Procurement Executive (SPE) in coordination with SAOs or their designees. The AoAs should include the following information

- (1) Identification of the document as an “Analysis of Alternatives”;
 - (2) The name of the agency, the contracting activity, and requiring activity;
 - (3) Description of the requirement;
 - (4) The spend category and subcategory associated with the planned acquisition;
 - (5) The contract/program name;
 - (6) The total contract value and spend;
 - (7) The contract tier;
 - (8) Identification of existing contracts, if applicable, and explanation of why they are not an appropriate solution;
 - (9) The contract type, product and service code(s), and North American Industry Classification Systems code(s);
 - (10) Identification of the applicable OMB Justification Code as well as providing a justification explaining why a certain contract tier is not suitable (e.g., for Tier 0 planned acquisitions, provide an explanation as to why Tier 1, Tier 2, and BIC solutions are not suitable) – these codes are listed in [OMB Memo M-19-13, Attachment 3 Appendix](#);
 - (11) Any other information supporting the planned acquisition (e.g., service-level requirements); and
 - (12) Name(s) of key point of contacts for the planned acquisition.
- (viii) AoAs are not required for any actions related to Defense-centric spend (e.g., related to the development of weapons systems) and agency-wide spend through Multiple Award Schedule Blanket Purchase Agreements (BPAs), since MAS is an approved Government-wide acquisition program that adheres to the general principles of category management.

- (ix) There is no dollar threshold established for the development of an AoA to support a new multi-agency or Government-wide contract for common goods and services. However, an AoA will ordinarily not be required if the agency is seeking to sponsor a new multi-agency or Government-wide contract that is reflected in a category manager's strategic plan approved by OMB.
 - (x) Except where a specific OMB management policy or guidance document states otherwise, agencies retain the authority to move forward with their planned actions to meet SUM and BIC goals. AoAs should be reviewed and approved by the CAO and/or SPE in coordination with SAOs or their designees. OMB may share information from the AoA tables with relevant category managers and BIC solution owners both for awareness and to facilitate conversations between agencies and solution owners. In addition, OMB reserves the right to request additional information where the rationale for creating a new vehicle is weak or unsubstantiated in light of existing performance information or other considerations.
- (4) HCAs and contracting officers should also seek the assistance of the CMSO to provide category management data analytics to support market research and decision-making. Analytics include category assessments, intelligence reports and dashboards. The e-mail address for CMSO inquiries is VACatMgmtSupOfc@va.gov.
- (5) HCAs should partner with their specific Office of Small Disadvantaged Business Utilization (OSDBU) to align the intent of category management with their individual office's annual small business goals.
- (i) Beginning in FY 2022 following the issuance of [OMB Memo M-22-03](#), all awards made to applicable certified and self-certified socioeconomic small businesses will count as a SUM solution, classified as Tier 2-SB. The Tier 2-SB credit applies to 8(a) and other small disadvantaged businesses, women-owned small businesses, service-disabled veteran-owned small businesses, and small businesses working in HUBZones.
 - (ii) Tier 2-SB credit will be awarded to agencies automatically in bi-monthly updates to the public-facing [category management dashboards](#) found on the Acquisition Gateway.
- (6) HCAs should develop, in conjunction with the VA's designated category managers, effective vendor management strategies to improve communications with contractors, especially those that support mission critical functions.

- (7) HCAs, if necessary, should request and/or provide training to their workforce to increase the use of common contract solutions as well as job aides (i.e. checklists, frequently asked questions, etc.).
- (8) HCAs and acquisition professionals should continuously review their specific organization's annual category management goals, as well as their 1) annual acquisition forecasts to determine if category management can be utilized; 2) demand management plan; and 3) vendor management plan.

SUBCHAPTER B—ACQUISITION PLANNING

PART M809—CONTRACTOR QUALIFICATIONS

Sec.

Subpart M809.1—Responsible Prospective Contractors

M809.104	Standards.
M809.104-1	General standards.
M809.104-2	Special standards.
M809.104-5	Representation and certifications regarding responsibility matters.
M809.105	Procedures.
M809.105-1	Obtaining information.
M809.105-2	Determinations and documentation.

Subpart M809.2—Qualifications Requirements

M809.202	Policy.
M809.206	Acquisitions subject to qualification requirements.
M809.206-1	General.

Subpart M809.5—Organizational and Consultant Conflicts of Interest

M809.502	Applicability.
M809.503	Waiver.
M809.504	Contracting officer responsibilities.

Attachments

- [M809-A](#) Determination of Contractor's Responsibility Template
- [M809-B](#) Justification for Qualification Requirements (JQR)

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SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART M809—CONTRACTOR QUALIFICATIONS

Subpart M809.1—Responsible Prospective Contractors

M809.104 Standards.

M809.104-1 General standards.

(a) The contracting officer may consider any of the following to determine that the prospective contractor has adequate financial resources:

(1) Contacting the prospective awardee's financial institution.

(2) Obtaining Dun & Bradstreet (D&B) Company Reports. In the event the award of a contract is delayed for any reason which causes the D&B Business Credit Report to be more than 60 days old, the contracting officer will run a new report to ensure nothing has changed that may prevent the award.

(3) Obtaining company audits and annual financial reports.

(4) Obtaining annual tax returns.

(5) Contractor's past performance and delivery history.

M809.104-2 Special standards.

(a) For a pre-award survey prescribed by [M809.106-1](#), a contracting officer must develop special standards of sanitation applicable to the acquisition of subsistence and services prescribed by [M809.106-1\(a\)](#).

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

(c) VA Nutrition and Food Services is responsible for the identification and purchasing of all subsistence items and food service supplies needed for patient and resident food services. All products are purchased in accordance with the Subsistence Prime Vendor contract and other authorized procurement services as needed.

M809.104-5 Representation and certifications regarding responsibility matters.

(a) The contracting officer may not award a contract to an offeror that has a Federal tax delinquency or a felony conviction within the past 24 months (see [FAR 52.209-11](#)), unless the Suspending and Debaring Official (SDO) has determined

suspension and debarment (S&D) is unnecessary. The SDO responsibilities at [FAR 9.104-5](#) are not delegated, therefore, when a contracting officer identifies a Federal tax delinquency or a felony conviction in a contractor's Representations and Certifications, it must be referred to the SDO.

M809.105 Procedures

M809.105-1 Obtaining information.

(a) Along with the sources cited at [M809.104-1](#), the contracting officer may use the following sources to support the responsibility of determination:

- (1) Bid and proposal information.
- (2) Pre-award survey reports (see [M809.106-1](#) for conditions for conducting pre-award surveys).
- (3) Records and experience data including verifiable knowledge of personnel within the contracting office.
- (4) Audit offices, contract administration offices, program offices and other sources (i.e., publications, suppliers, subcontractors, etc.).

(b) The contracting officer shall review the following resources to ensure the prospective contractor or subcontractor is registered and/or doesn't have negative past performance:

- (1) System for Award Management (SAM): Inquiries should be made via [SAM.gov](#). Per [FAR 4.1102\(a\)](#), offerors and quoters are required to be registered in SAM at the time an offer or quotation is submitted (see [FAR 4.1102\(a\)](#) for exceptions).
- (2) VETS-4212. In accordance with [FAR 22.1302](#), the contractor is required to submit the annual form [VETS-4212](#), Federal Contractor Veterans' Employment Report if applicable. See [FAR 22.1303](#) to determine applicability.
- (3) Prospective awardee(s)' business credit reports. Contracting officers have unlimited access to pull the vendor(s)' reports, such as D&B reports at the [DNBi](#) pageto assist in determining if the prospective awardee has adequate financial resources to perform the contract or the ability to obtain them.
- (4) Vendor Information Pages (VIP) database: In order for a SDVOSB or VOSB to receive contract awards under VA's Veterans First Contracting Program, they must then be listed as verified on the [VIP database](#) per [M819.7003](#). The Contractor Responsibility Assessment tool (see paragraph (5) below) conducts the final VIP Check prior to award.

(5) *Contractor Responsibility Assessment (CRA)*. (1) FedDataCheck conducts a search of beta.SAM.gov, as part of contractor responsibility determination prior to contract award, via the Data Universal Numbering System (DUNS). (NOTE: The General Services Administration (GSA) will retire the DUNS on April 4, 2022, and will be replaced with a 12-character, alpha-numeric unique entity identifier (UEI)). The CRA memo/report can be used for official use in the contract file as the determination of responsibility document.

(2) Request a CRA Report

(i) *Single Request Option*

(A) Send an email to VendorReport@FedDataCheck.net.

(B) In the subject line of the email include the DUNS number as the first nine characters.

(ii) *Multiple Request Option*

(A) Send an email to VendorReport@FedDataCheck.net.

(B) Up to 50 DUNS numbers can be submitted on an attached Notepad file. One (1) DUNS per line no spaces on either side.

(C) CRA reports will be sent via email in a PDF file. The first report will be within two minutes, 10 seconds or less for each additional report.

M809.105-2 Determinations and documentation.

(a) *Determinations*. (1) When the contracting officer lacks sufficient information to determine the contractor responsible, the contracting officer must make a determination of non-responsibility. The contracting officer will make a determination of non-responsibility in accordance with [FAR 9.105-2](#).

(2) Contractors may be found nonresponsible when, among other things, they:

(i) Do not comply with federal equal opportunity requirements.

(ii) Fail to agree to an acceptable plan for subcontracting with small businesses.

(iii) Have an organizational conflict of interest.

(iv) Are known government employees (see [FAR 3.602](#) for exceptions).

(v) Are quasi-military armed forces.

(b) *Support documentation.* The contracting officer must include a written determination of responsibility or non-responsibility to support the decision and upload it to the Electronic Contract Management System contract briefcase. Contracting officers must ensure the required responsibility determination is thoroughly completed and documented in the contract file.

(1) Contracting officers are encouraged to use the template in Attachment [M809-A](#) when documenting a contractors' responsibility.

(2) If the Contracting officer, in compliance with M809.105-1, does find negative information about the prospective awardee, such as negative past performance information or a business credit report rating the awardee as medium or high financial risk, the Contracting officer must fully explain and provide the rationale to still deem the awardee as responsible and/or proceed with award. In addition, the contracting officer must include discussion regarding mitigation efforts or post-award actions, if any, the contracting officer will accomplish to ensure the VA's interest(s) are protected.

Subpart M809.2—Qualifications Requirements

M809.202 Policy.

(a)(1) The head of the contracting activity (HCA) must sign a written justification before establishing a qualification requirement in accordance with [FAR 9.202\(a\)\(1\)](#).

(i) Contracting officers are encouraged to use Attachment [M809-B](#) when preparing the justification to establish qualification requirement(s).

M809.206 Acquisitions subject to qualification requirements.

M809.206-1 General.

The HCA is designated to determine whether or not an emergency exists, as provided in [FAR 9.206-1\(b\)](#).

Subpart M809.5—Organizational and Consultant Conflicts of Interest

M809.502 Applicability.

In any solicitation for the services addressed at [FAR 9.502](#), the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see [M809.507-1\(b\)](#) and [M852.209-70](#)).

M809.503 Waiver.

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

M809.504 Contracting officer responsibilities.

(a) If the contracting officer finds that it is in the best interest of the government notwithstanding an organizational conflict of interest, the contracting officer may request a waiver from the HCA.

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

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

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SUBCHAPTER B—ACQUISITION PLANNING

PART M811—DESCRIBING AGENCY NEEDS

Subpart M811.1—Selecting and Developing Requirements Documents

Sec.

M811.103 Market acceptance.
M811.105-70 Multiple laboratory sources.

Subpart M811.2—Using and Maintaining Requirements Documents

M811.204-70 Contract clause.

Subpart M811.6—Priorities and Allocations

M811.602-70 General parameters for VA participation.
M811.603 Procedures.

Subpart M811.70—Special Requirements

M811.7001 Definition.
M811.7002 Contracting for conferences.

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SUBCHAPTER B—ACQUISITION PLANNING

PART M811—DESCRIBING AGENCY NEEDS

Subpart M811.1—Selecting and Developing Requirements Documents

M811.103 Market acceptance.

(a) [FAR 11.103](#) provides that the head of an agency may, under appropriate circumstances, require offerors to demonstrate if items offered are commercial market acceptable. The Department of Veterans Affairs (VA) delegates to the head of the contracting activity (HCA), who may re-delegate to the contracting officer, to determine if items offered are commercial market acceptable. The contracting officer shall determine if there are appropriate circumstances to require offerors to demonstrate that the items offered have achieved commercial market acceptance as provided in [FAR 11.103](#).

M811.105-70 Multiple laboratory sources.

When soliciting for laboratory services, the contracting officer shall not specify a label or certificate of a single laboratory if there are multiple laboratory sources.

Subpart M811.2—Using and Maintaining Requirements Documents

M811.204-70 Contract clause.

The contracting officer shall use the clause 852.211-72, Technical Industry Standards, as prescribed in 811.204-70. The contracting officer shall either furnish the requirements documents with the solicitation or include instructions for obtaining or examining the documents and shall use in conjunction with the appropriate clause at—

(a) [FAR 52.211-1](#), Availability of Specifications, Listed in the GSA Index of Federal Specifications, Standards and Commercial item Descriptions (as prescribed at [FAR 11.204\(a\)](#));

(b) [FAR 52.211-3](#), Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial item Descriptions (as prescribed at [FAR 11.204\(c\)](#)); or

(c) [FAR 52.211-4](#) (as prescribed at [FAR 11.204\(d\)](#)), Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

Subpart M811.6—Priorities and Allocations

M811.602-70 General parameters for VA participation.

Priorities and allocations of critical materials, services and facilities under the Defense Priorities and Allocations System (DPAS) are administered by the United States Department of Commerce. As stated in [FAR 11.602](#), DPAS provides for preferential acceptance and performance of contracts and orders for certain approved programs. Within the VA, only those programs or projects having a direct connection with supporting certain approved national defense or energy programs may be considered for such preferences and the priorities and allocation authorities permitted under DPAS. VA is not authorized to assign a priority rating for critical materials.

M811.603 Procedures.

(b) When the VA determines through its acquisition process that critical materials, services and facilities in support of programs are required and it is not feasible to use a substitute material, services or facilities, the Commerce Department has agreed to assist the VA in obtaining a priority rating.

(e) When a need to obtain a priority for critical materials, services, or facilities has been established, the contracting officer shall submit a request to the HCA and to the Deputy Senior Procurement Executive (DSPE) addressing the following:

- (1) A description of the program, project or the new item, service or facility.
- (2) The critical material, service or facility needed and the quantity required.
- (3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer.
- (4) The VA contract or purchase order number, the contractor's purchase order number, and the delivery time requirement as stated in the solicitation or offer.
- (5) The time the contractor proposes is necessary to deliver the materials if priority is not granted.
- (6) The nature and extent of the need, emergency or other exigency, e.g.:
 - (i) Damage to the physical plant.
 - (ii) Impairment of the patient care program.
 - (iii) Creation of safety hazards.

(iv) Any other pertinent condition that could result because of failure to secure assistance in obtaining the critical materials, services or facilities in support of approved national defense or energy programs as stated in [FAR 11.602](#).

Subpart M811.70—Special Requirements

M811.7001 Definition.

(a) The Department of Veterans Affairs (VA) shall use the definition of “conference” included in the Federal Travel Regulation (FTR): “meeting, retreat, seminar, symposium or event that involves attendee travel. Additionally, training activities are considered conferences under 5 CFR 410.404.”

(b) Specifically for VA, conferences include training sessions, meetings, advisory committee meetings or similar events where travel is involved and that are VA hosted or co-hosted, or where other Federal or non-Federal entities host, without regard to number of attendees or dollar value.

M811.7002 Contracting for conferences.

(a) *Compliance with VA conference planning, execution, reporting and oversight policy and procedures.* When contracting for conference or training facilities, contracting officers shall review <http://vaww.trainingevents.va.gov/> and comply with [VA Financial Policy, Volume XIV, Travel, Chapter 10, Conference Planning, Oversight, and Reporting](#), dated May 24, 2018 and the FTR 41 CFR 301-74, Conference Planning.

(b) *Policy.*

(1) A warranted contracting officer will be responsible for the acquisition of services and supplies over the micro-purchase threshold to ensure acquisitions in support of conferences are planned and managed in accordance with the FAR.

(2) Ensure VA does not solicit lodging accommodation upgrades as part of contracts. The contracting officer must obtain a technical review of all proposed contracts with hotels or similar facilities for conferences where VA’s cost may exceed \$25,000.

(3) Ensure VA does not incur expenditures for the use of entertainment (videos, music, etc.), motivational speakers, the purchase of promotional items, or embossing, or otherwise imprinting the name of the organization or conference on any supplies, mementos, or other handouts. Reference Vol II, Ch. 4, “Awards, Ceremonies, Food or Refreshments, Gifts or Mementos”.

(4) Ensure the contracting officer or government purchase cardholder makes all purchases within the limits of their individual authority, and only authorized contracting

personnel may make commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of a contract.

(5) Ensure purchases are made with appropriate approval. Reference VA Financial Policy, Volume XVI Ch. 1, Government Purchase Card Program, regarding the cardholder's responsibilities (i.e. prohibiting split payment of a single requirement), and the approving official's responsibility to certify all transactions made by cardholders, and to ensure applicable documentation is maintained in accordance with Section 100505 in this chapter.

(6) Nominate a qualified contracting officer's representative (COR) for conferences.

(7) Checking the Hotel and Motel National Master List. The Hotel and Motel Fire Safety Act of 1990 codified at 15 U.S.C. 2225 prohibits use of appropriated funds to sponsor or pay for, in whole or in part, a meeting, convention, conference or training seminar in a hotel or other place of public accommodation, unless the venue meets the fire prevention and control guidelines described in 15 U.S.C.1225. The Federal Emergency Management Agency (FEMA), United States Fire Administration (USFA) maintains the Hotel and Motel National Master List, a list of hotels and motels complying with Pub. L. 101-391. Contracting officers and purchase card holders shall contract only with listed hotels or motels to conduct meetings, conventions, conferences, or training seminars. Any advertisement, request for quotation, invitation for bid, or announcement for space shall include a requirement that the proposed facility be listed on USFA's Hotel and Motel National Master List at <http://apps.usfa.fema.gov/hotel/>.

SUBCHAPTER B—ACQUISITION PLANNING

PART M812—ACQUISITION OF COMMERCIAL ITEMS

Sec.
M812.001 Definitions.

**Subpart M812.3—Solicitation Provisions and Contract Clauses
for the Acquisition of Commercial Items**

M812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

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PART M812—ACQUISITION OF COMMERCIAL ITEMS

M812.001 Definitions.

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

**Subpart M812.3—Solicitation Provisions and Contract Clauses
for the Acquisition of Commercial Items**

M812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) Contracting officers may tailor clauses to be inconsistent with customary commercial practice if they prepare and obtain approval of a waiver in accordance with [FAR 12.302\(c\)](#). Prior to issuing the solicitation, the contracting officer shall request approval of waivers from—

- (1) The head of the contracting activity for individual contracts; or
- (2) The Senior Procurement Executive for a class of contracts.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

M813.000	Scope of part.
M813.001	Definitions.
M813.003	Policy.
M813.003-70	Prosthetic appliances and sensory aids devices.

SUBPART M813.1—PROCEDURES

M813.101	General.
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SUBPART M813.3—SIMPLIFIED ACQUISITION METHODS

M813.301	Governmentwide commercial purchase card.
M813.302-2	Unpriced purchase orders.
M813.303	Blanket purchase agreements (BPAs).
M813.303-1	General.
M813.303-5	Purchases under BPAs.
M813.303-6	Review procedures.
M813.305	Imprest funds and third party drafts.
M813.305-70	Imprest funds and third party drafts guidance.
M813.306	SF 44, Purchase Order—Invoice—Voucher.
M813.307-70	VA forms.
M813.307-71	VA Simplified Acquisition Summary template.

Attachment

[M813-A](#), Department of Veterans Affairs Simplified Acquisition Summary for Purchases over the Micro-Purchase Threshold—Template

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PART M813—SIMPLIFIED ACQUISITION PROCEDURES

M813.000 Scope of part.

This part prescribes VA policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (SAT)(see [FAR 2.101](#)).

M813.001 Definitions.

As used in this part—

Prosthetics is a broad term used to identify the total concept associated with replacing, supporting and/or complementing human anatomy impaired or destroyed as a result of trauma or disease. This term may be used to refer to orthotics, sensory aids, medical equipment, medical supplies, components, research, education and training, appliances, services, repairs, and any other related aspects of administering the total program.

Prosthetic appliances means all aids, devices, parts or accessories which patients require to replace, support, or substitute for impaired or missing anatomical parts of the body. The items include artificial limbs, terminal devices, stump socks, braces, hearing aids and batteries, cosmetic facial or body restorations, optical devices, manual or motorized wheelchairs, orthopedic shoes, and similar items.

M813.003 Policy.

M813.003-70 Prosthetic appliances and sensory aids devices.

(a) All contracting officers making prosthetic appliance and sensory aid purchases are required to execute contracts in accordance with all applicable statutes; procurement regulations such as the [FAR](#), [VAAR](#), [VAAM](#); and other applicable supplementary guidance and procedures developed and disseminated by their respective heads of the contracting activities (HCAs).

(b) In accordance with [FAR 1.602-1](#), only contracting officers have the authority to purchase prosthetic appliances and sensory aids within their respective warrant authority.

(c) Contracting officers shall—

(1) Comply with the clinician's prescription. The contracting officer does not have the authority to change or override a clinician's prescription, but should ensure that the prescription adequately supports the use of sole source authority under 38 U.S.C. 8123 when applicable;

(2) Use mandatory and priority sources provided in [FAR 8.002](#) and/or full and open competition procedures when the prosthetic appliance or sensory aid prescribed is generally available and interchangeable;

(3) Determine the best method to procure the prosthetic appliance or sensory aid device required by the prescription when required to use other than full and open competition, citing the FAR or VAAR appropriately. In the event 38 U.S.C. 8123 is cited, the contracting officer, prosthetic representative, and requesting clinician should discuss using this authority as appropriate; and

(4) Ensure the contract file is appropriately documented (see [FAR 4.803](#) Contents of contract files) and filed in Electronic Contracting Management System (eCMS).

SUBPART M813.1—PROCEDURES

M813.101 General.

(c) Simplified Acquisition Procedures (SAP) are those procedures prescribed in [FAR Part 13](#) for making purchases of supplies and services – the aggregate of which does not exceed the SAT, including purchases at or below the micro-purchase threshold. When using SAP, some procedures and guidance from [FAR Part 12](#), Acquisition of Commercial Items, and/or [FAR Part 15](#), Contracting by Negotiation, may apply in addition to [FAR Part 13](#) procedures and guidance. Awards valued at or below the micro-purchase threshold should be structured (e.g., contract line items, delivery schedule, and invoice instructions) to minimize the generation of excessive invoices.

(d) SAP may also be used for acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$7.5 million (\$15 million for acquisitions as described in [FAR 13.500\(c\)](#)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items.

(e) VA's acquisition officials shall ensure that all procurement actions valued above the micro-purchase threshold are entered into eCMS.

SUBPART M813.3—SIMPLIFIED ACQUISITION METHODS

M813.301 Governmentwide commercial purchase card.

The Governmentwide commercial purchase card program (also known as the [GSA SmartPay Program](#)) provides charge cards to agencies/departments throughout the U.S. Government. This program is intended to streamline the small purchase and the payment process, minimize paperwork, eliminate imprest fund transactions, and

generally simplify the administrative effort associated with procuring goods and services under the micro-purchase threshold.

(a) Only a contracting officer may use the Governmentwide commercial purchase card to make purchases or make payments in excess of the micro-purchase threshold. These purchases and payments shall not exceed the contracting officer's warrant authority.

(b) As required by [FAR 13.301\(b\)](#), VA's procedures for the use of the purchase card are contained in [Department of Veterans Affairs Financial Policy, Government Purchase Card for Micro-Purchases Volume XVI – Chapter 1B, Dated October 22, 2019](#).

M813.302-2 Unpriced purchase orders.

(b) It is VA's policy to discourage the use of unpriced purchase orders; therefore, they shall only be used when the conditions in [FAR 13.302-2\(b\)](#) exist.

M813.303 Blanket purchase agreements (BPAs).

M813.303-1 General.

(a) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. Other information pertaining to BPAs—

(1) BPAs are not contracts, they are agreements and the subsequent orders placed against them become contracts once there is acceptance from both parties;

(2) BPAs are established with no minimum amount required;

(3) BPAs contain the framework (clause and prices) for incorporation in future orders;

(4) BPAs may be used by ordering officers under specific limitations within their delegated authority;

(5) BPAs are appropriate when—

(i) Requirements exist for a wide variety of items within a broad class of goods, but the exact items, quantities, and delivery requirements are not known in advance;

(ii) There is a need to provide commercial sources of supply for one or more offices in a given area that do not have or need authority to purchase otherwise;

(iii) The awarding of numerous purchase orders can be avoided through the use of BPAs; or

(iv) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(6) Contracting officers shall:

(i) Identify the Procurement Instrument Identifiers, as defined at [FAR 4.001](#) for all BPAs issued, in accordance with [FAR 4.1602\(a\)\(4\)](#); and

(ii) Report to the Federal Procurement Data System all BPAs exceeding the micro-purchase threshold in accordance with [FAR 4.606\(a\)\(ii\)\(C\)](#).

M813.303-5 Purchases under BPAs

In accordance with [FAR 13.303-5\(b\)\(2\)](#), HCAs, within their respective contracting activities, may increase the limit for individual purchases under BPAs to \$7.5 million (\$15 million for acquisitions as described in [FAR 13.500\(c\)](#)). This higher threshold should only be used when acquisition planning supports the strategy, and it is documented in the contract file.

M813.303-6 Review procedures.

(b) Contracting officers shall adhere to [FAR 13.303-6](#) and perform BPA reviews at least annually and update them if necessary. Contracting officers must also maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modify existing arrangements.

M813.305 Imprest funds and third party drafts.

M813.305-70 Imprest funds and third party drafts guidance.

The Governmentwide commercial purchase card and/or convenience checks shall be used in lieu of imprest funds and third party drafts as the purchase card is the preferred method for making micro-purchases. Additionally, convenience checks shall only be used if a vendor does not accept the Governmentwide commercial purchase card or other electronic funds transfer means of payment. The purchase card contains internal control measures, which mitigate the risk for fraud, waste, and abuse and reduces the need for additional resources to manage multiple micro-purchase procedures.

M813.306 SF 44, Purchase Order—Invoice—Voucher.

The Governmentwide commercial purchase card and/or convenience checks shall be used in lieu of [SF 44](#), Purchase Order-Invoice-Voucher.

M813.307-70 VA Forms.

(a) Contracting officers may use [VA Form 10-7078, titled: Authorization and Invoice for Medical and Hospital Services](#), when ordering medical, dental, and ancillary services totaling up to \$10,000 per authorization when such services are not available under existing contracts.

(b) Contracting officers shall use [VA Form 10-2511, titled: Authority and Invoice for Travel by Ambulance or Other Hired Vehicle](#), when authorizing patient travel.

(c) Contracting officers shall use [VA Form 10-2421, titled: Prosthetic Authorization for Items or Services](#), for indicated services not in excess of the SAT.

M813.307-71 VA Simplified Acquisition Summary template.

Attachment [M813-A](#) is a fillable summary document that may be used for simplified acquisitions over the micro-purchase threshold. The use of this template is not mandatory.

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SUBCHAPTER C – CONTRACTING METHODS AND CONTRACT TYPES

PART M814—SEALED BIDDING

Sec.	
M814.000	Scope of part.
M814.001-70	Definitions.

Subpart M814.2—Solicitation of Bids

M814.201	Preparation of invitations for bids.
M814.201-2	Part I—The Schedule.
M814.202	General rules for solicitation of bids.
M814.202-4	Bid samples.
M814.202-5	Descriptive literature.
M814.204	Records of invitations for bids and records of bids.
M814.211-70	Release of acquisition information.
M814.270	Alternative bid items—supply and services.

Subpart M814.3—Submission of Bids

M814.301-70	Determination—responsiveness of bids.
M814.303	Modification or withdrawal of bids.
M814.304	Submission, modification, and withdrawal of bids.

Subpart M814.4—Opening of Bids and Award of Contract

M814.402	Opening of bids.
M814.403	Recording of bids.
M814.404	Rejection of bids.
M814.404-1	Cancellation of invitations after opening.
M814.404-2	Rejection of individual bids.
M814.407	Mistakes in bids.
M814.407-3	Other mistakes disclosed before award.
M814.407-4	Mistakes after award.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 814—SEALED BIDDING

M814.000 Scope of part.

This part establishes procedures, and provides guidance and instructions when contracting for supplies, services, and construction by sealed bidding.

M814.001-70 Definitions.

“Line item,” as defined by [FAR 3.302](#), means an item of supply or service, specified in a solicitation, that the offeror must separately price.

Subpart M814.2—Solicitation of Bids

M814.201 Preparation of invitations for bids.

M814.201-2 Part I—The Schedule.

(a) When using Standard Form 33, Solicitation, Offer and Award, the contracting officer should include the following cautionary notice in the contract Schedule:

“Notice to Bidders—Use Item 13 of the [Standard Form 33](#), Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this invitation for bid[s] sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause. EXAMPLE: If you insert “NET 20” not offering a prompt payment discount in Item 13, the contracting officer will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.”

(b) When using other authorized forms (e.g., [Standard Form 1447](#), Solicitation/Contract; [Standard Form 1449](#), Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

M814.202 General rules for soliciting of bids.

M814.202-4 Bid samples.

(a) *Policy.* The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics, but the

contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list “Subjective Characteristics” and “Objective Characteristics.” The contracting officer shall explain the rationale to request bid samples in the file documentation.

M814.202-5 Descriptive literature.

When using brand name or equal purchase descriptions, the provision at [FAR 52.211-6\(b\)\(3\)](#), Brand Name of Equal (AUG 1999), satisfies the requirement for descriptive literature. Additional descriptive literature is unnecessary and should not be requested.

M814.204 Records of invitations for bids and records of bids.

(b) Maintenance of the contract file prescribed by FAR part 4 and VAAR part 804 and retention of canceled IFB files will fulfill the requirements set forth in [FAR 14.204\(b\)](#).

M814.211-70 Release of acquisition information.

(a) *Before award.* The contracting officer and all members of the acquisition team shall limit access to information concerning the Government cost estimate to—

(1) Government personnel whose official duties require knowledge of the estimate and who have signed a non-disclosure statement; and,

(2) Non-Government personnel with a need to know and who have signed a non-disclosure agreement (contracting officers may tailor the non-disclosure agreement for these purposes).

(b) No employee of VA may disclose information as to probable acceptance or rejection of any bid to any bidder or other person outside of VA, except as authorized by the FAR.

M814.270 Alternative bid items—supply and services.

(a) When an IFB for supplies or services contain alternative bid items the IFB shall contain a statement on the order of priority in which the contracting officer will award any alternative bid items, based on the relative importance of the item and the amount of funds available.

(b) A price schedule containing alternative bid items may be used when the both of

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the following apply:

(1) VA intends to make a single aggregate award for all items in the IFB within certain fiscal limitations, and

(2) The IFBs solicits prices on an item and alternate item basis.

(c) The following is an example of a price schedule that includes a base item, a SubCLIN 0001AA and alternate bid items SubCLINs 0002AA and 0002AB:

Basis for award. *Only one contract will be awarded as a result of this solicitation. A single award will be made on CLIN 0001 SubCLIN 0001AA, but in the event the bid exceeds funds made available for award, award will be made on Alternate bid Item CLIN 0002 SubCLIN 0002AA or 0002AB, in that order, if sufficient funds are available for award. Award of an award group will be made on an “All or None” basis.*

0001	<i>Custodial Services IAW PWS: _____ Dated: _____ consisting of 24 pages of ____ (Including cover)</i>	<i>Quantity</i>	<i>Unit of Issue</i>	<i>Unit Price</i>	<i>Extended Price</i>
<i>0001AA:</i>	<i>Award Group A Custodial Services Buildings 1, 2 and 3</i>	<i>12</i>	<i>Mo.</i>	<i>\$ _____</i>	<i>\$ _____</i>
0002	<i>Alternate Bid Items In order of priority.</i>				
<i>0002AA:</i>	<i>Award Group B Custodial Services Buildings 1 and 2</i>	<i>12</i>	<i>Mo.</i>	<i>\$ _____</i>	<i>\$ _____</i>
<i>0002AB:</i>	<i>Award Group C Custodial Services- Building 1</i>	<i>12</i>	<i>Mo.</i>	<i>\$ _____</i>	<i>\$ _____</i>

(End of schedule)

(d) Contracting officers shall not modify the resulting contract to include any alternative bid item that was not made part of the contract at the time of award.

Subpart M814.3—Submission of Bids

M814.301-70 Determination—responsiveness of bids.

Where a contracting officer cannot determine the timeliness of the submission of a bid, modification, or withdrawal, the contracting officer shall submit the matter to the HCA for a decision.

M814.303 Modification or withdrawal of bids.

(b) The receipt required by [FAR 14.303\(b\)](#) for withdrawal of a bid in person should read substantially the same as follows:

“I am a bona fide agent for or representative of (Bidder’s name and address). I am authorized to withdraw the bid on IFB No. scheduled for opening on (insert date), and acknowledge receipt of the unopened bid.

Print Name

Telephone No

Date

Signature”

M814.304 Submission, modification and withdrawal of bids.

(a) All bids received by mail or delivered in person by the bidder (or by other means authorized by the IFB) shall be time and date stamped immediately upon receipt in the office of the addressee designated in the IFB.

Subpart M814.4—Opening of Bids and Award of Contract

M814.402 Opening of bids.

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) If a bid bond is required, the bid opening officer shall read aloud the bid bond form, the amount of bid security, and the name of the surety. The recorder shall record this information on the Abstract of Offers, [SF1409](#) or [OF1419](#) or supplemental sheet. The bid opening officer and bid recorder shall sign and date the Abstract of Offers and supplemental sheets.

(c) Preferred practices for conducting bid openings.

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- (1) To ensure that bid opening occurs at the exact time specified, the bid opening officer should verify and announce the time before opening the bids.
- (2) For the information of bidders present, the bid opening officer should provide an audible announcement approximately one minute prior to bid opening.
- (3) The bid opening officer should announce audibly the commencement of bid opening. In the announcement, the bid opening officer should identify the invitation(s) for bids scheduled for opening.
- (4) For construction contracts that provide for alternative bids or additive and deductive items, the bid opening officer should announce the amount of funds available for the award before the opening of bids.
- (5) The bid opening officer should open the bids in full view of the parties present.
- (6) When practicable, the bid opening officer should announce the following information for each bid: the bidder's name, item and unit price bid, and any other pertinent information, such as delivery and discount terms.
- (7) For bids submitted in multiple copies, one copy should remain in the bid opening room for public examination until the bid abstract is substituted. The contracting officer should use the original. For bids submitted in original only, see [FAR 14.402-1\(c\)](#). The contracting officer should retain all supplemental financial forms or other information submitted with each bid. The contracting officer shall not provide supplemental information for public examination.
- (8) The bid opening official shall forward any negotiable instrument submitted as a bid guarantee to the contracting officer for handling in accordance with part M828.101-70, Safekeeping and return of bid guarantee.
- (9) The contracting officer shall:
 - (i) Prepare a record of the opening for the contract file including the names of persons attending the bid opening and the firms or organizations they represent;
 - (ii) Verify the entries on all copies of a bid resolving any suspected mistake(s) following the procedures in [FAR 14.407](#).
 - (iii) Retain the envelopes in which bids and bid modifications are received until all awards are made. After award, the contracting officer should retain those with notations concerning abnormal receipt or opening for identification in the IFB file. The contracting officer may destroy the remainder.

M814.403 Recording of bids.

(a) The bid opening official shall prepare and sign a statement that any erasures, strikeovers, or changes in price were noted at the time of bid opening. The statement shall be included on, or attached to, the abstract or record of bids.

(b) In accordance with local procedures, the contracting officer shall make the abstract available for public inspection for at least 30 calendar days. The contracting officer should include late bids determined eligible for consideration on the bid abstract or, if necessary, in an amendment.

M814.404 Rejection of bids.

M814.404-1 Cancellation of invitations after opening.

(c) The authority to make the determinations in [FAR 14.404-1\(c\)](#), (e) and (f) is delegated to the HCA. For each IFB that the contracting officer cancels or for which he/she receives no bids, the contracting officer shall include in the file in eCMS:

- (1) A copy of the IFB, pursuant to [FAR 14.404-1](#), together with a list showing to whom the invitation was sent, identified by the IFB number; and
- (2) A statement to explain why no award was made.

M814.404-2 Rejection of individual bids.

(a)(1) When the contracting officer finds that a bid being considered for an award is incomplete, e.g., all pages of the IFB have not been returned by the bidder, the contracting officer shall obtain the advice of legal counsel. The contracting officer shall determine whether or not the bid as submitted is in such a form that acceptance would create a valid and binding contract. The resultant contract must require the contractor to perform in accordance with all of the terms and conditions of the invitation.

(2) When VA receives a single bid in response to an IFB with a bidding time of 30 or more calendar days, the contracting officer should not reject the bid simply because it specifies a bid acceptance time that is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate a bid is a compelling reason for rejection; however, the contracting officer shall first request that the bidder extend the acceptance date of the bid to allow for proper evaluation.

(3) In cases where VA receives more than one bid, the contracting officer shall reject as nonresponsive an individual bid that is not in compliance with the Government's bid acceptance time, since consideration of such an offer would unfairly disadvantage other bidders.

M814.407 Mistakes in bids.

M814.407-3 Other mistakes disclosed before award.

(e) The authority to make the determinations required by [FAR 14.407-3](#) under paragraphs (a), (b), (c) and (d) is delegated to the SPE and is further delegated, without power of redelegation, to the HCA.

M814.407-4 Mistakes after award.

(b) The approval authority to act on [FAR 14.407-4\(b\)](#) is delegated to the HCA or designee. The designee shall be no lower than the Chief/Director of the contracting office.

(d) Each proposed determination shall be coordinated with the Office of General Counsel, through the HCA or designee, for legal coordination. The HCA or designee shall transmit the results of this coordination to the contracting officer, who will make the final determination on the alleged mistake in bid after award.

(f) The HCA or designee shall maintain the agency records of mistakes in bids after award, as required by [FAR 14.407-4](#).

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M815—CONTRACTING BY NEGOTIATION

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Appendix and Attachment

[Appendix M815-A](#) - Department of Veterans Affairs Source Selection Guide

[Attachment M815-A](#) - Sample Price Negotiation Memorandum (PNM) Checklist

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M815—CONTRACTING BY NEGOTIATION

M815.000 Scope of part.

This part prescribes VA's policies and procedures regarding competitive and noncompetitive negotiated acquisitions.

M815.001 Definitions.

The following terms are associated with, and often used in the course of conducting negotiated acquisitions:

Best value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

Clarifications means the limited exchanges between the Government and offerors that may occur when award without discussions is contemplated.

Communications means the exchanges, between the Government and offerors, after receipt of proposals.

Competitive range means and consists of the offers rated most highly after proposal evaluations. Discussions will be held only with offerors in the competitive range. (See [FAR 15.306\(c\)](#)).

Discussions means the negotiations conducted in a competitive acquisition. Discussions take place after establishment of the competitive range.

Industry Day means an event held by the Government to present requirements to industry representatives (e.g., pre-solicitation conference, pre-proposal conference, etc.).

Lowest Price Technically Acceptable means a process used in competitive negotiated contracting where the best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

Minor or clerical error means a minor informality or irregularity that is merely a matter of form and not of substance or a clerical error apparent on its face in the proposal.

Peer review means the review of processes and strategies by other experts in a particular field.

Proposal modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations. ([See FAR 15.001.](#))

Requirements documents means all aspects of the Request for Proposal (RFP) that convey the needs of the Government to offerors, including the Statement of Objectives (SOO), Statement of Work (SOW), Performance Work Statement (PWS), technical requirement documents, and system requirement documents.

Requiring office means the entity (for example, a program management office or other organizational entity) responsible for translating user requirements into the requirements documents within the RFP that communicate those requirements to offerors.

Risk, as it pertains to source selection, is the potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror's proposed approach to achieving the contract objectives may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

Source selection means the process used in competitive, negotiated contracting to select the proposal that offers the best value to the Government.

Source Selection Authority (SSA) means the Government official responsible for selecting the source(s) in a negotiated acquisition.

Source Selection Advisory Council (SSAC) means a group of senior Government personnel who provide counsel during the source selection process and must prepare the comparative analysis of the SSEB's evaluation results, when directed by the SSA. Organizations should establish an SSAC for acquisitions with a total estimated value of \$100M or more. An SSAC is optional for acquisitions with a total estimated value of less than \$100M.

Source Selection Evaluation Board (SSEB) means a group of Government and, if needed, approved non-Government personnel, representing the various functional disciplines relevant to the acquisition. The SSEB is comprised of a Chairperson and Evaluators (also known as SSEB Members). Use of non-Government personnel as voting members of the SSEB is strictly prohibited (see [FAR 7.503\(c\)\(12\)\(ii\)](#), [FAR 37.203](#) and [FAR 37.204](#)).

Source Selection Plan (SSP) means a plan that describes how the source selection will be organized, how proposals will be evaluated and analyzed, and how source(s) will be selected.

Source Selection Team (SST) means a team that is tailored to the unique acquisition, tasked with carrying out a source selection. Composition of the team generally consists of the SSA, contracting officer (if different from the SSA), SSAC, SSEB, Advisors, Cost or Price Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.

Source Selection Decision Document (SSDD) refers to the document that reflects the SSA's independent, integrated and comparative assessment and decision.

Strength means an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

Uncertainty means any aspect of a non-cost/price factor proposal for which the intent of the offer is unclear (e.g. more than one way to interpret the offer or inconsistencies in the proposal indicating that there may have been an error, omission, or mistake).

Subpart M815.1—Source Selection Processes and Techniques

M815.101 Best value continuum.

M815.101-1 Tradeoff process.

(a) This process allows for a tradeoff between non-cost factors and cost/price and allows the Government to accept other than the lowest priced proposal or other than the highest technically rated proposal to achieve a best-value contract award. Further, it describes various rating approaches to evaluating proposals when using a tradeoff process.

(b) Tradeoff process is appropriate when—

- (1) The requirement is complex;
- (2) The Government anticipates substantive differences in the proposed solutions; or
- (3) The Government is willing to pay for added benefits of a higher priced solution.

Subpart M815.2—Solicitation and Receipt of Proposals and Information

M815.203 Requests for Proposals.

M815.203-70 Developing the request for proposals.

A well-written RFP is critical to the success of the source selection. There should be consistency between the requirements documents, SSP (if utilized), and the RFP. Therefore, the acquisition team must ensure a clear linkage between the requirements and evaluation factors to maximize the accuracy and clarity of the RFP.

M815.204 Contract format.

(e) The cognizant head of the contracting activity (HCA) may exempt individual contracts or classes of contracts that are not identified in [FAR 15.204\(a\) through \(d\)](#) from the use of a uniform contract format. Written justification for the exempted use shall be prepared by the contracting officer (CO), with the coordination/review of the affected contract administration and payment offices. The justification shall be forwarded to the HCA for review/approval/disapproval.

Subpart M815.3—Source Selection

M815.303-70 Source Selection roles and responsibilities.

The extent to which one will use the positions and procedures outlined below will depend upon the complexity and dollar value of each acquisition and the available resources. COs should apply prudent business sense to tailor the processes to fit the circumstances. (See [Appendix M815-A](#), Department of Veterans Affairs Source Selection Guide)

(a) A typical source selection organization consists of—

- (1) SSA;
- (2) CO;
- (3) SSEB;
- (4) Source Selection Evaluation Board Chairperson;
- (5) SSAC; and

(6) Advisors, Cost or Pricing Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.

(b) The SSA shall—

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(1) Be responsible for the proper and efficient conduct of the source selection process in accordance with this procedure and all applicable laws and regulations;

(2) Appoint the chairpersons for the SSEB and, when used, the SSAC;

(3) Ensure that personnel appointed to the SST are knowledgeable of policies and procedures for properly and efficiently conducting the source selection. Ensure the SST members have the requisite acquisition experience, skills, and training necessary to execute the source selection, and ensure the highest level of team membership consistency for the duration of the selection process;

(4) Ensure that realistic source selection schedules are established and source selection events are conducted efficiently and effectively in meeting overall program schedules. The schedules should support proper and full compliance with source selection procedures outlined in this document and the established Source Selection Plan (SSP) for the acquisition;

(5) Ensure all involved in the source selection are briefed and knowledgeable of Subsection 27(a) of the Office of Federal Procurement Policy Act, 41 U.S.C., Section 423, and [FAR 3.104](#) regarding unauthorized disclosure of contractor bid and proposal information, as well as source selection information;

(6) Ensure that all persons receiving source selection information are instructed to comply with applicable standards of conduct (including procedures to prevent the improper disclosure of information) and sign a Non-Disclosure Agreement and a conflict of interest statement;

(7) Ensure Conflict of Interest Statements (from both Government members/advisors and non-Government team advisors) are appropriately reviewed and actual or potential conflict of interest issues are resolved prior to granting access to any source selection information (see CFR 2635);

(8) Make a determination to award without discussions or enter into discussions;

(9) Select the source whose proposal offers the best value to the Government in accordance with the established evaluation criterion in the appropriate section of a non-Uniform Contract Format (UCF) solicitation or in accordance with the established evaluation criterion in Section M of the solicitation; and

(10) Document the rationale in the SSDD.

(c) The CO shall—

(1) Manage all business aspects of the acquisition and advice and assist the SSA in the execution of the responsibilities as outlined above and work with the SSEB

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Chair to ensure the evaluation is conducted in accordance with the evaluation criteria specified in the solicitation;

(2) Ensure that required approvals are obtained before non-Government personnel are allowed to provide source selection support (See [FAR 37.203](#));

(3) Ensure that procedures exist to safeguard source selection information and contractor bid or proposal information;

(4) Ensure that all non-Government advisors who are to assist in the source selection process do not have access to proprietary information until the CO receives the consent of the submitting contractor(s) to provide access thereto;

(5) Maintain the documents and source selection evaluation records;

(6) Release the final solicitation only after obtaining all required approvals;

(7) Serve as the single point of contact for all solicitation-related inquiries from actual or prospective offerors;

(8) Control exchanges with offerors after receipt of proposals (see [FAR 15.306](#));
and

(9) Enter discussions, with the approval of the SSA, to establish the competitive range. Note that only the CO may conduct discussions with the offeror(s).

(d) The SSEB (members) shall—

(1) Conduct a comprehensive review and evaluation of proposals against the solicitation requirements and the approved evaluation criteria;

(2) Ensure the evaluation is based solely on the evaluation criteria outlined in the RFP;

(3) Not perform comparative analysis of proposals;

(4) Assist the SSEB Chairperson in documenting the SSEB evaluation results;

(5) Support any post-source-selection activities, such as debriefings and post-award reviews/meetings, as required; and

(6) Not make source selection recommendations unless requested by the SSA.

(e) The SSEB Chairperson shall—

(1) Be responsible for the overall management of the SSEB and act as the SSEB's interface to the SSA and the SSAC (if used);

(2) Establish evaluation teams, as appropriate, to support an effective source selection evaluation. Appoint members to the evaluation teams, subject to approval of the SSA;

(3) Ensure the skills of the personnel, the available resources, and times assigned are commensurate with the complexity of the acquisition;

(4) Ensure members of the SSEB are trained and knowledgeable on how an evaluation is conducted prior to reviewing any proposals;

(5) Ensure the evaluation process follows the evaluation criteria and ratings are being consistently applied;

(6) Provide consolidated evaluation results to the SSA or the SSAC if the SSAC is designated as the interface between the SSEB and SSA; and

(7) Support all post source selection activities such as debriefings and post-award reviews/meetings, as required.

(f) SSAC Members shall—

(1) Review the evaluation results of the SSEB to ensure the evaluation process follows the evaluation criteria and the ratings are appropriately and consistently applied; and

(2) Consolidate the advice and recommendations from the SSAC into a written analysis and recommendation for use by the SSA in making the best-value decision. Ensure that minority opinions within the SSAC are documented and included within the analysis.

(g) The SSAC Chairperson shall appoint SSAC members, subject to SSA approval.

(h) Government Advisors: When an SSAC is not used, consideration should be given to the use of Government advisors to assist the SSA. These advisors can provide expertise within specific functional areas, similar to the involvement of the SSAC, but need not provide the formal written comparative analysis required of an SSAC. Government advisors may also be used to provide assistance to the SSEB as subject-matter experts.

(i) Non-Government Advisors: Use of non-Government personnel as advisors may be authorized, but should be minimized as much as possible. Non-Government advisors shall be supported by a written determination (see [FAR 37.203](#), Policy, and [FAR 37.204](#), Guidelines for determining availability of personnel). The CO must ensure that the non-Government advisor who will assist in the source selection process does not have access to proprietary information until the CO receives the consent of the

submitting contractor(s) to provide access to the non-Government advisor to execute this requirement; the following is suggested solicitation language:

(1) Offerors are advised that employees of the firms identified below may serve as nongovernment advisors in the source selection process. These individuals will be authorized access only to those portions of the proposal data and discussions that are necessary to enable them to perform their respective duties. Such firms are expressly prohibited from competing on the subject acquisition.

INSERT NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF FIRMS

(2) In accomplishing their duties related to the source selection process, the aforementioned firms may require access to proprietary information contained in the offerors' proposals. Therefore, pursuant to [FAR 9.505](#), these firms must execute an agreement with each offeror that states that they will (1) protect the offerors' information from unauthorized use or disclosure for as long as it remains proprietary and (2) refrain from using the information for any purpose other than that for which it was furnished. To expedite the evaluation process, each offeror must contact the above companies to effect execution of such an agreement prior to the submission of proposals. Each offeror shall submit copies of the agreement with their proposal.

(j) Program Management/Requirements Office: The requirements development process is vital to the success of the negotiated acquisition. The leadership of the Program Management/Requirements Office shall:

(1) Ensure the technical requirements—consistent with the cognizant requirements document—are approved and stable, establish technical specifications, and develop a SOW, SOO, or PWS.

(2) Allocate the necessary resources including personnel, funding and facilities to support the source selection process.

(3) Assist in the establishment of the SST to include serving as an advisor or member to the SSAC and/or the SSEB as needed.

(4) Assist in the development of the evaluation criteria consistent with the technical requirements/risk.

M815.303-71 Source Selection Authority.

The authority of the Secretary to appoint an individual other than the CO to serve as the source selection authority for a particular acquisition or a group of acquisitions is delegated to the HCA. If an HCA needs to designate an individual other than the CO as the source selection authority for a particular acquisition or a group of acquisitions, the HCA shall prepare a written request/justification and shall submit the request/justification to the Senior Procurement Executive for approval/disapproval.

M815.303-72 Developing the Source Selection Plan.

(a) An SSP is recommended for all best-value, negotiated, competitive acquisitions under [FAR 15](#). The SSP documents the source selection organization that is established. Likewise, a typical source selection plan sets out evaluation factors, evaluation standards, and evaluation procedures. All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (see [FAR 15.204-5\(c\)](#)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described (see [FAR 15.304\(d\)](#)).

(b) The SSA shall approve the SSP before the final solicitation is issued. At a minimum, the SSP (if utilized), shall—

(1) Include a brief description of the requirement, a summary of the objectives, and any reference to applicable guidance;

(2) Provide a summary of the planned acquisition approach to include a description of how the specific acquisition being competed fits into the entire program;

(3) Describe the organizational structure and identify the various roles and responsibilities of each of the source selection teams, such as the SSET, the SSAC, the CO, and the SSA, during the phases of the source selection. List members and advisors by name, position title, company affiliation, if applicable, or by functional area;

(4) Describe the process and controls for communication with industry as well as internal Government team communication, to include the use of email, during the source selection, and outline the security measures that will be utilized to ensure the information is protected as source selection information. (See [FAR 2.101](#) and [FAR 3.104](#));

(5) Identify the evaluation factors, subfactors, their relative order of importance; the importance of all non-cost or price factors to the cost or price factor; and the evaluation process, including specific procedures and techniques to be used in evaluating proposals. Include within the SSP document or attach the relevant and most current portions of Sections L and M in the RFP (or a non-UCF solicitation) to preclude inconsistencies between the SSP and RFP;

(6) Identify the types of documents that will be prepared during the course of the source selection, to include at a minimum an SSEB Report covering the initial evaluation, updated as necessary following responses to discussion questions, and a final SSEB Report after receipt of Final Proposal Revisions, an SSAC Report, if there is an SSAC, which reflects the SSAC's consideration of the final SSET Report and makes the SSAC's recommendation to the Source Selection Authority, and in accordance with [FAR 15.308](#), the Source Selection Decision Document (SSDD), which reflects the

SSA's independent determination. A power point presentation is acceptable to brief the SSA and the SSAC on the status of the procurement, but should not, as a general rule, constitute the official Reports required for the source selection;

(7) Identify the major acquisition activities and projected completion dates. Reference the information on the use of independent management reviews, Industry Days, and draft RFPs as significant source selection activities;

(8) Address the use of non-Government personnel and compliance with requirements; and

(9) Detail the plan for securing all source selection materials throughout the evaluation process.

M815.304 Evaluation factors and significant subfactors.

M815.304-70 Evaluation factor commitments.

If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with [VAAR 852.215-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the CO shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value. The CO should monitor this contract as delineated in [FAR 19.704\(a\)\(10\)\(ii\)](#), which requires the offer to submit periodic reports so that the Government can determine the extent of compliance by the offer through the subcontracting plan.

M815.305 Proposal evaluation.

(a)(2)(i) *Past performance evaluation.* When a past performance evaluation is required by [FAR 15.304](#), and the solicitation includes either the clause at [FAR 52.219-8](#), Utilization of Small Business Concerns, or the clause at [FAR 52.219-9](#), Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of these clauses. Contractors may not be given "downgraded" past performance evaluations for availing themselves of their rights by filing protests and claims or for deciding not to use Alternate Dispute Resolution (ADR) and contractors may not be given more "positive" past performance evaluations for refraining from filing protest and claims or for agreeing to use ADR.

M815.306 Exchanges with offerors after receipt of proposals.

(d) For acquisitions with an estimated value of \$25 million or more, COs should conduct discussions and follow the procedures at [FAR 15.306](#).

Subpart M815.4—Contract Pricing

M815.404 Proposal analysis

M815.404-1 Proposal analysis techniques.

(d) *Cost realism analysis.* (1) A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed. The results of the analysis should be able to answer the following key questions:

- (i) Is the offer based on realistic assumptions?
- (ii) Does it show sufficient understanding of the requirements?
- (iii) Are its various parts consistent with one another?
- (iv) Is the cost/price data current, reasonably accurate, and verifiable? and
- (v) Does the whole thing make sense in view of the experience?

(2) A cost realism analysis shall be performed when a cost-type contract is anticipated. In accordance with [FAR 15.404-1\(d\)\(3\)](#), cost realism on fixed price incentive contracts may be performed or in exceptional cases, on other competitive fixed price contracts. Adjustments for the most probable cost estimate should not be based solely on differences from the Independent Government Cost Estimate (IGCE). Where performance specifications are used, the IGCE is based on the Government's implicit approach to the work, which may differ from the offerors approach. Also, the IGCE rates may not be comparable. The technical evaluation should reveal areas where each offeror's approach is inadequate or its resourcing unrealistic, given the proposed approach. The technical evaluators and the cost evaluators should crosswalk technical deficiencies and weaknesses and their impact on cost to assure proper adjustments can be made to the proposed costs. However, this crosswalk should not be performed until after each group has completed their initial evaluation to avoid intentional or unintentional bias.

(i) The probable cost may differ from proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the "best value." Therefore, when developing a most probable cost estimate, consider the following:

(A) As the required information is collected to evaluate the realism of the offeror's cost (or price) estimate, the Government is also collecting the information required to develop its own estimate of the most probable contract cost.

(B) In developing the estimate, adopt the portion of the offeror's estimate that appears realistic and modify the portion of the estimate that is believed to be unrealistic. For example, the Government may accept proposed labor hours and adjust the labor rate based on an audit recommendation. Adjustments may increase or decrease cost estimates.

(C) Use relevant estimating tools and techniques.

(D) Conduct meaningful discussions with offerors in the event there are any meaningful adjustments to the offeror's estimated cost.

(E) As the Government completes the estimate, clearly document the rationale for any adjustment.

M815.404-4 Profit.

(b) Policy.

(1)(i) The CO shall use a structured approach for developing a prenegotiation profit or fee objective for those acquisitions that require cost analysis.

(2) [FAR 15.404-4\(b\)\(2\)](#) permits agencies to use another agency's structured approach. Therefore, COs are encouraged to use the Department of Defense Weighted Guidelines method as delineated in the [Department of Defense Federal Acquisition Regulation Supplement](#).

M815.405 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the CO and the offeror an opportunity to reach agreement on a fair and reasonable price. The CO is responsible for exercising the requisite judgment needed to reach a negotiated agreement with the offeror and is solely responsible for the final price agreement. However, when significant auditor recommendations are not adopted, the CO must provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The CO's objective is to select an appropriate contract type and negotiate a price that provides the contractor the greatest incentive for efficient and economical performance. The CO must balance the contract type, cost, and profit or fee negotiated to achieve a total result -- a price that is fair and reasonable to both the Government and the contractor. (See [Attachment M815-A](#), Sample Price Negotiation Memorandum (PNM) Checklist)

M815.406-3 Documenting the negotiation.

(a) The CO shall document in the form of a price negotiation memorandum (PNM) the principal elements of the negotiated agreement in accordance with [FAR 15.406-3](#). (See the attached [Attachment M815-A](#), Sample PNM Checklist).

(c) The PNM serves as a detailed summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, the negotiated position, and the methodology and rationale used in arriving at the final negotiated agreement.

(d) The CO shall document in the Electronic Contract Management System the principal elements of the negotiated agreement in accordance with [FAR 15.406-3](#).

Subpart M815.6—Unsolicited Proposals

M815.604 Agency points of contact.

(c) When a VA employee receives an unsolicited proposal from a potential offeror of an unsolicited proposal, they must refer the proposal to the following:

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

(2) Proposals to the VA National Acquisition Center must be referred to the Executive Director, VA National Acquisition Center.

(3) Proposals to VA Central Office must be referred to the Executive Director, Office of Procurement, Acquisition, and Logistics.

M815.606 Agency procedures.

HCA's shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of [FAR 15.606\(a\)](#). The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M816—TYPES OF CONTRACTS

Subpart M816.1—Selecting Contract Types

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M816.102 Policies.

Subpart M816.2—Fixed-Price Contracts

M816.203 Fixed-price contracts with economic price adjustment.
M816-203-2 Application.
M816-203-3 Limitations.
M816.203-70 Adjustments based on price indexes of labor or material.

Subpart M816.4—Incentive Contracts

M816.401 General.

Subpart M816.5—Indefinite-Delivery Contracts

M816.504-70 Indefinite-quantity contracts.
M816.505 Ordering.
M816.505-70 Maximum order amounts.

Subpart M816.7—Agreements

M816.703 Basic ordering agreements.
M816.770 Consignment agreements.

ATTACHMENTS:

[M816-A](#), Sample Evaluation Checklist

[M816-B](#), Examples of Non-Biological Implantable Devices

APPENDIX:

[M816-A, VA Indefinite-Delivery Indefinite-Quantity \(IDIQ\) Guide](#)

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M816—TYPES OF CONTRACTS

Subpart M816.1—Selecting Contract Types

M816.102 Policies.

(e) The contracting officer shall obtain the approval of the cognizant Head of the Contracting Activity (HCA) or designee before issuing a solicitation that includes time- and materials or labor-hour pricing provisions if the ceiling price or estimated value of the acquisition exceeds \$1,000,000.

(f) Excluded from this requirement are solicitations for Architecture/Engineering (A/E) contracts, construction contracts, or professional engineering contracts, and proposed contracts covering emergencies, such as repair of a broken water, sewer, or communication line, repair storm damage, etc. (e.g., where [FAR 6.302](#) applies).

Subpart M816.2—Fixed-Price Contracts

M816.203 Fixed-price contracts with economic price adjustment.

M816.203-2 Application.

(c) The contracting officer shall, when contracting by negotiation, use the Federal Acquisition Regulation clauses as prescribed in [FAR 16.203-4 \(a\)\(2\)](#), (for standard supplies), [FAR 16.203-4 \(b\)\(2\)](#) (for semi-standard supplies) and [FAR 16.203-4 \(c\)\(2\)](#) (for actual cost of labor or material). If the Economic Price Adjustments (EPA) clauses in the FAR do not satisfy the conditions stated above and are inappropriate for those prescribed circumstances, the Contracting Officer shall use one of the VA prescribed clauses at [VAAR 852.216-71](#) through [VAAR 852.216-75](#).

(d) EPA clauses can be complex and difficult to draft and administer. The contracting officer shall be thoroughly familiar with the market, the costs associated with that market, the cost or price index as the basis for price adjustments, and the relationship between that cost index and the cost components of the contract. For guidance on evaluating sealed bids containing EPA clauses see [FAR 14.408-4](#).

(e) Options may be included in a solicitation, provided the contracting officer fully considers the provisions of [FAR 17.202\(b\) and \(c\)](#) and complies with the requirements of [FAR 17.205](#).

(f) The use of options where EPA clauses are utilized should not become routine or a standard operating procedure. Careful consideration is required when utilizing EPA clauses in conjunction with contracts with option years.

(g) Prior to including options in a solicitation where usage of EPA clauses may be required, contracting officers should first consider soliciting a one year contract without an EPA clause.

M816.203-3 Limitations.

(a) The HCA or designee, (whom shall be at least one level above the contracting officer), shall review and approve any EPA ceiling adjustment exceeding ten (10) percent. This approval could cover several contracts over a period not to exceed two years and require a review of the adjustment ceiling, when the following conditions are met:

(1) A supplier requests that the ceiling be raised.

(2) Analysis of current market conditions reveals that most supplies of similar supplies or services are affected. If the price ceiling is raised, the contracting officer must modify the contract to reflect the revised ceiling.

M816.203-70 Adjustments based on price indexes of labor or material.

(a) Additional guidance on the clause EPA of Contract Prices Based on a Price Index (VAAR 852.216-71):

(1) There are a number of Consumer Price Indexes (CPIs) prepared by the Department of Labor, as well as, other broad base indexes. When acquiring supplies and services the contracting officer should select the appropriate EPA index.

(2) When acquiring consumer supplies, the most appropriate index might be the Consumer Price Index for All Urban Consumers (CPI-U) 1982-84=100, Not Seasonally Adjusted (see [Bureau of Labor Statistics](#)). When acquiring general consumer services, the most appropriate index might be the CPI-U for the specific geographical location where the services are provided.

(b) Additional guidance on the clause Proportional EPA of Contract Price Based on a Price Index (VAAR 852.216-72):

(1) Proportional EPA clauses cover a broad range of potential price change categories. Their use may benefit a contractor who experiences a price increase in one component part of the contract.

(2) When the commodity does not account for 100% of the cost of performing the contracted service or producing the supplies changes in the price of that commodity, the result should be a proportional change to the total contract price or unit price.

(3) The method used to calculate price changes in this index clause differs from the method used in the CPI clause, identified in [VAAM816.203-70\(a\)](#).

(c) Additional guidance on Economic Price Adjustment—Fuel Surcharge (VAAR 852.216-75):

The fuel cost index, for the purpose of price adjustment under this clause, Economic Price Adjustment—Fuel Surcharge, (VAAR 852.216-75), shall be the “Weekly Retail On-Highway Diesel Prices Index,” which is published by the U.S. Department of Energy: U.S. Energy Information Administration.

Subpart M816.4—Incentive Contracts

M816.401 General.

(h) Solicitations that include monetary incentives, regardless of dollar value, shall be issued only after the HCA or designee approves a written Determination & Findings (D&F). Approval authority of the D&F must be no lower than one level below the HCA.

(i) Contracts with incentives require periodic evaluations of the contractor’s performance throughout the life of the contract.

(j) Open and on-going communications with the contractor are essential to the successful use of contract incentives.

(k) Benefits of utilizing incentive contracts include:

(1) Allows the VA to assess performance and appropriately recognize the contractor’s accomplishments.

(2) During the evaluation process, the VA has the flexibility to consider both the contractor’s performance levels and the conditions under which these levels are achieved.

(l) Contracting officers should consider the following interrelated factors when recommending an incentive arrangement, i.e., cost, performance, delivery to facilitate the development of an incentive strategy:

(1) Estimated dollar value of the requirement;

(2) Complexity and criticality of the acquisition;

(3) Benefits expected to result from incentivized performance; and,

(4) Contracts and task or delivery orders containing an incentive requires additional administrative and management effort. Consider the availability of VA resources before employing this method.

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(m) The contracting officer shall draft a D&F identifying the factors considered in arriving at a decision to use an incentive arrangement. The HCA or designee, no lower than one level below the HCA, shall sign the D&F. The contracting officer's documentation of the factors considered in the decision to use a monetary incentive and the proposed evaluation plan shall accompany the request for the D&F signed by the HCA, per [FAR 16.401\(d\)](#).

(n) If the contracting officer determines that an incentive type of contract is appropriate, an Incentive Review Board (IRB) should be appointed and an evaluation plan must be developed, as part of the acquisition planning process. The IRB means the team of individuals identified who have been designated to assist the Fee-Determining Official in making incentive fee determinations.

- (1) The evaluation plan shall include the following:
 - (i) Organizational structure of the requiring activity;
 - (ii) Roles and responsibilities of the evaluation team/IRB;
 - (iii) Roles and responsibilities of the Fee-Determining Official (FDO);
 - (iv) Roles and responsibilities of the contracting officer;
 - (v) Evaluation periods and respective incentive or fee allocations for each period;
 - (vi) Evaluation criteria and performance criteria;
 - (vii) Categories of performance being evaluated (e.g., technical, quality, cost, delivery) and their associated weights, if any;
 - (viii) Evaluation process; and,
 - (ix) Procedures for amending or changing the plan.

(2) The FDO shall be at least one level above the contracting officer and shall approve the evaluation plan, prior to the issuance of the solicitation.

(3) The desired or required results are realized when incentives are structured properly. The incentives should not result in tradeoffs of quality or other benefits (i.e., expedited delivery at the expense of quality).

(4) The evaluation plan, prior to the payment of an incentive, requires the contractor to provide a minimum level of satisfactory performance on the contract.

(5) The contractor shall provide self-evaluations at the end of each

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evaluation period, and other pertinent information as requested by the contracting officer in accordance with the evaluation plan.

(o) At the end of each performance evaluation period, the contracting officer's representative or the performance monitor shall prepare a written assessment of the contractor's performance (see Sample Evaluation Checklist: Attachment [M816-A](#)).

(1) The IRB shall review the assessments and submit a written evaluation and recommendation to the FDO. The FDO shall make the final decision on whether an incentive is to be authorized and, if so, the amount.

(2) The contracting office shall ensure the decision is documented in the contract file.

(3) VA's written assessment shall support the evaluation of the contractor's performance.

Subpart M816.5—Indefinite-Delivery Contracts

M816.504-70 Indefinite-quantity contracts.

The VA Indefinite-Delivery Indefinite-Quantity (IDIQ) Guide is provided as [Appendix M816-A](#) for use by the acquisition workforce.

M816.505 Ordering.

(b) *Orders under multiple-award contracts.*

(2) *Exceptions to the fair opportunity process.*

(ii)(B) *Orders exceeding the simplified acquisition threshold.* In accordance with FAR 16.505(b)(2)(ii), a written justification shall be required to waive or limit competition for task orders under MATOCs. Approval of the justification shall be obtained prior to release of a request for proposal. The written justification must address the content requirements at FAR 16.505(b)(2)(ii)(B).

(C) *Approvals.* (1) For a proposed task orders exceeding the simplified acquisition threshold, but not exceeding \$750,000, the justification shall be approved by a contracting officer one level above the contracting officer. The contracting officer shall ensure that the justification is accurate and complete to the best of their knowledge and belief.

(2) For a proposed task order over \$750,000 but not exceeding \$15,000,000, the justification shall be approved by the advocate for competition of the activity placing the order.

(3) For a proposed task order over \$15,000,000 but not exceeding \$75,000,000, the HCA shall approve the justification.

(4) For a proposed task order over \$75,000,000, the justification shall be approved by the SPE.

(b)(8) *Task-order and delivery-order ombudsman.* The task-order contract and delivery-order ombudsman for VA is the Associate Deputy Assistant Secretary (ADAS) for Procurement Policy, Systems and Oversight. The VA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions. If any corrective action is needed after reviewing complaints from contractors, the VA Ombudsman shall provide a written determination of such action to the contracting officer. Contracting officers shall be notified of any complaints submitted to the VA Ombudsman.

M816.505-70 Maximum order amounts.

(a) For IDIQ construction contracts, the maximum order amount is \$50,000,000.

(b) For IDIQ facilities maintenance, repair, and construction contracts, the maximum order amount is \$500,000.

Subpart M816.7—Agreements

M816.703 Basic ordering agreements.

(a) Individual orders issued under a basic ordering agreement (BOA) are closed out individually, following the completion of the contractor's performance (see [FAR 4.804-1](#)).

(b) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities in the Federal Procurement Data System. The ordering activity shall receive this data in sufficient time to prepare its report for the action. The report shall be prepared within three (3) working days from the issuance of the order.

M816.770 Consignment agreements.

(a) Consignment agreements shall only be established under a contract and by a contracting officer. A consignment agreement is a delivery method for a specified period of time in which the contractor provides items for Government use and the contractor receives reimbursement only if and when the item is used by the Government. Unused items are returned to the contractor at the end of the effective period of the agreement without reimbursement or other expenses to the Government.

(b) Delivery of items by consignment may be considered in those instances where the requirement for an item will be immediate and it is not possible to predetermine which of several types or models are required. Having each type or model on hand (through a consignment) will assure instant availability to the user. See Attachment [M816-B](#) for examples of non-biological implantable devices appropriate for usage of consignment agreements.

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(c) A consignment agreement will only be used when it is determined to be in the best interest of the Government by the HCA and the determination shall be made a part of the official contract file.

(d) The contracting officer shall obtain technical and legal review on items with an anticipated expenditure of \$250,000 or more per year (except for a consignment agreement established under, and provided for in, a Federal Supply Schedule contract).

(e) The contracting officer or the contracting officer's representative shall establish and maintain an accountability file showing all transactions and the total value of property on consignment at all times. As a minimum, the accountability file must reflect the following:

- (1) Date of receipt of property.
- (2) Ownership of property.
- (3) Description of property.
- (4) Quantity.
- (5) Value of property.
- (6) Agreement number.
- (7) Record of orders placed for property used during agreement period and receiving official.
- (8) Acknowledgment of receipt of unused property returned to owner.

(f) Contracting officers should consider the following when soliciting offers:

(1) Specifying the effective period of time for the consignment and that the Government reserves the right to cancel the consignment at any time.

(2) Requiring offerors to provide pricing on items that will be sold to the Government.

(3) Specifying that the Government assumes no liability for assigned consignment items, but that the Government will be obligated only to the extent of authorized orders against the agreement.

(4) Food and Drug Administration (FDA) and other Regulatory Agencies Recall. At the time of the award of the agreement, the contractor(s) will not have any outstanding actions from the FDA or other regulatory agencies or unresolved FDA warning letters on the manufacturing processes or quality control issues involving the products covered by this solicitation. The Government will require proof from the contractor that any FDA issues

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have been resolved. A letter to the contractor from the regulatory agency will meet this requirement.

(5) Technology refresh:

(A) All implants, instruments, and accessories offered shall be state-of-the-art technology. "State-of-the-art" is defined as the most recently designed components which are announced for marketing purposes, available, maintained and supported in accordance with requirements specified in the solicitation. Components and products with a manufacturer's planned obsolescence within the first year of the agreement are not acceptable.

(B) If upgrades of instruments, implants, or supplies become available after establishment of an agreement, the contractor will offer them as substitutes to the initial items.

(C) The contractor will provide to the contracting officer the following information:

(i) List of specific initial items which shall be updated.

(ii) Product literature for the new items and a detailed description of the differences between the initial items and the new items, and a specific analysis of the comparative advantages/disadvantages of the items involved.

(D) Agreement will be modified to acknowledge any updated items and pricing.

(g) *Inventory*. Contractor agrees to furnish and maintain an inventory of the consignment items in accordance with the terms and conditions of the agreement. Items, as well as all required instruments and all related supplies, will be placed at the Government's location at no expense to the Government. Minimum inventory levels proposed by the contractor will be reviewed and accepted by the Government prior to placement. The Government will make the final determination on inventory levels. A complete listing of models and/or part numbers will be provided to the Government with a copy to the contracting officer, or designee upon delivery of the initial inventory.

(h) *Initial inventory*. Initial consignment inventory shall be placed in the medical center within (insert number) calendar days after award of the agreement. Consignment inventory will be placed in a location designated by the Government. The Government will provide adequate space/shelving for implants, instruments, and supplies.

(i) Instrumentation Sets:

(1) To accommodate surgery scheduling, additional sets (loaner sets) may be needed and will be made available upon mutual agreement between the Government and contractor. Contractors shall be contacted at a minimum (insert number of days) prior to the anticipated date of surgery for elective cases and (insert number of hours) for urgent cases. Contractors are responsible for retrieving the loaner sets after surgery where they

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will be cleaned but not sterilized. Instrumentation includes any accessories necessary to accomplish the implant (does not include non-implantable consumable items which are available from multiple suppliers).

(2) If an instrument from the set becomes lost or damaged due to Government negligence, the Government will then be responsible for the damaged or lost instrument.

(j) *Liability.* The Government assumes no liability for any items assigned to the Government on a consignment basis until such time as a requirement for the item exists and an order is placed against the contract/consignment agreement. An exception to contractor liability is loss or damage of any consignment item due to Government negligence.

(k) *Replacement items.* After each procedure, the Government will provide a list of items used and the contractor will provide replacements within (insert number of hours). Replacements will be shipped FOB Destination within consignee's premises. Contractor shall ship products directly to (insert appropriate address) at no additional charge. Contractor shall provide maintenance (examine sets to see if they need to be refurbish and/or sharpened) and redundancy so that there is a fail safe mechanism (back-up set) if primary set is faulty. The contractor shall re-sterilize and/or replace, at no charge, any items that are handled but not implanted.

(l) *Inventory Maintenance.* Contractor's personnel will periodically (no less than once per quarter) conduct a physical inventory of the consignment inventory with a copy of the inventory furnished to the contracting officer. Contractor will maintain, remove, or replace inventory as necessary.

(m) *Expiring Inventory.* Inventory having less than 90 days sterility/expiration date shall be removed and replaced by the contractor in coordination with the Government. A list of all products will be provided to the contracting officer. These services will be completed at no cost to the Government.

(n) *Defective Items.* Defective and worn-out instruments will be replaced by the contractor at no charge to the Government, unless the Government has misused or lost the implant or instrument.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M817—SPECIAL CONTRACTING METHODS

Subpart M817.1—Multiyear Contracting

Sec.	
M817.105-1	Uses.
M817.107	Options.
M817.108	Congressional Notifications.

Subpart M817.2—Options

M817.202	Use of options.
M817.204	Contracts.

Subpart M817.4—Leader Company Contracting

M817.402	Limitations.
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Subpart M817.5—Interagency Acquisitions

M817.502	Procedures.
M817.502-1	General.
M817.503	Ordering procedures.
M817.504	Reporting requirements.

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M817—SPECIAL CONTRACTING METHODS

Subpart M817.1—Multiyear Contracting

M817.105-1 Uses.

(a) Each head of the contracting activity (HCA) determination to use multiyear contracting shall be in accordance with the criteria stated in [FAR 17.105-1\(a\)](#).

M817.107 Options.

When including options as a part of a multiyear contract, options shall not be used to extend the performance of the original requirement beyond 5 years.

M817.108 Congressional notification.

(a) The Senior Procurement Executive (SPE) is delegated the authority to provide written notification of the proposed contract and of the proposed cancellation ceiling for that contract in accordance with [FAR 17.108\(a\)](#). Upon the HCA's approval of the determination, the SPE will sign the congressional notification letter, and provide it to the appropriate House and Senate committees through the VA Office of Congressional and Legislative Affairs.

Subpart M817.2—Options

M817.202 Use of options.

(a) The requiring activity's request to include option provisions should be part of the initial requirements documentation and appropriately covered during acquisition planning and documented via a Determination and Findings (D&F). The final determination on whether to include options rests with the contracting officer or source selection authority, if one is appointed other than the contracting officer.

M817.204 Contracts.

(e) The contracting officer must obtain the approval of the HCA or designee before awarding a contract that includes options exceeding the 5-year limitation specified in [FAR 17.204\(e\)](#).

Subpart M817.4—Leader Company Contracting

M817.402 Limitations.

(a)(4) The HCA shall designate a contracting officer to enter into a leader company contract. The contracting officer shall submit the proposed contract for legal review. The contract file will include a determination and finding signed by the contracting officer, and contain the concurrence of the HCA.

Subpart M817.5—Interagency Acquisitions

M817.502 Procedures.

When acquisition planning determines that it is appropriate to fulfill a requirement through an assisted acquisition, and VA is the requesting agency, the process outlined below shall be followed to prepare the interagency acquisition package for approval:

(a) The VA program official, after conducting initial market research and developing an acquisition plan, contacts their assigned contracting officer to discuss the proposed interagency acquisition.

(b) Personnel shall take into consideration the timeliness of market research performed in support of an interagency acquisition for the same or similar items/services procured for the same program office or requiring activity. Timely market research would be defined as market research conducted within the past six months of the date the interagency acquisition action was submitted to the HCAs.

(c) Upon completion of the acquisition plan and the D&F, if required, the program official in conjunction with the concurrence of the contracting officer, shall prepare the interagency acquisition package. The package shall consist of:

(1) Description of supplies, Statement of Work, Performance Work Statement, or Statement of Objectives.

(2) The acquisition plan that has been reviewed and approved.

(3) The D&F (when using the authority of the Economy Act).

(4) An independent government cost estimate as a method of determining the reasonableness of proposals.

(5) A certified funding document.

(6) Interagency Agreement Forms [FS 7600A](#) and [FS 7600B](#), or [VA Form 2269](#) if the requirement is between two VA appropriations. The following applies:

(i) Copies of all documentation listed in c. (1) through (6) above will be retained in the Electronic Contract Management System (eCMS) contract file as well as the Contracting Officer Representative files.

(ii) All interagency agreements must specify a dollar ceiling in block 9 of the 7600A. Any individual task or delivery order executed against the master agreement must also specify a dollar ceiling. Before the ceiling can be exceeded (after initial award of the interagency agreement), the program official must prepare a modification/amendment to the interagency acquisition and re-route the document through the approval process outlined above. Any vague or indefinite amount would violate the Anti-Deficiency Act, 31 U.S.C. 1341.

(iii) Requests for interagency acquisitions must be submitted through the eCMS planning module or Virtual Office of Acquisition, as appropriate.

M817.502-1 General.

(a) The HCA shall approve all assisted acquisitions where the VA component is the servicing agency.

(b) When VA intends to establish a multiple-agency or governmentwide acquisition contract, a business case analysis must be completed in accordance with [FAR 17.502-1\(b\)](#). Business cases shall be approved by an authority no lower than VA's SPE.

(c) HCAs shall:

1) Develop and implement guidance ensuring only qualified contracting individuals with appropriate training are assigned to all existing and future interagency acquisitions.

2) Establish procedures to review the Economy Act D&Fs, and, where applicable, acquisition plans on a semi-annual basis.

3) Establish procedures to review the contract files for interagency acquisitions on a semi-annual basis to ensure compliance with the FAR, the VAAR and the VAAM.

M817.503 Ordering procedures.

(a) All Economy Act interagency acquisitions with \$250,000 or more in life cycle costs, and all interagency acquisitions with \$750,000 or more in life cycle costs, require Office of General Counsel (OGC) review and concurrence. OGC reviews may be sought for any draft interagency acquisitions but must be obtained when the package is ready for final review and approval.

(b) All interagency acquisitions and interagency agreements for the procurement of IT or information technology related acquisitions, shall be supported by an Acquisition Plan that has been approved by the VA Chief Information Officer or an authorized designee.

M817.504 Reporting requirements.

A monthly report of interagency transactions will be prepared by Enterprise Acquisition Systems Service and distributed to the Office of Finance for the purpose of reconciling the procurement and financial accounting data systems. The report will be generated on the 2nd Wednesday of the month and copies of the report will also be provided to the SPE, Deputy SPE, each of the HCAs, and the Office of Acquisitions and Logistics Risk Management and Compliance Service.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M818—EMERGENCY ACQUISITIONS

Sec.

M818.000 Scope of part.

Subpart M818.2 – Emergency Acquisition Flexibilities

M818.270 VA Emergency Acquisition Thresholds

M818.271 National Interest Exemptions and National Interest Action Values

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SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART M818—EMERGENCY ACQUISITIONS

M818.000 Scope of part.

This part prescribes the VA's policies and procedures regarding emergency acquisitions.

Subpart M818.2 – Emergency Acquisition Flexibilities

M818.270 VA Emergency Acquisition Thresholds

(a) When authorized in a declared emergency (see [FAR 2.101](#)), the Department of Homeland Security, Federal Emergency Management Agency [disaster declaration page](#), the emergency acquisition flexibilities (see [FAR 18.001](#)) found at [FAR subparts 18.1](#) and [18.2](#), are hereby invoked. Additionally, the following thresholds are increased for VA acquisitions, only for the effective period established in support of the declared emergency—

(1) Micro-purchase threshold is increased in accordance with [FAR 13.201\(g\)\(1\)\(i\)](#) for goods and services purchased in the United States (see [FAR 18.202\(a\)](#)).

(2) Simplified acquisition threshold (SAT) is increased in accordance with [FAR 2.101](#) for any contract to be awarded and performed in the United States (see [FAR 18.202\(b\)](#)).

(3) The threshold for simplified procedures for certain commercial items is increased in accordance with [FAR 13.500\(c\)](#) and [18.202\(d\)](#).

(4) Purchases outside the United States will be approved on a case by case basis. All requests should be sent to va.procurement.policy@va.gov with subject line "Acquisition Emergency Flexibilities Purchase Outside US."

(b) Contracting officers should consider the applicability of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 41. U.S.C. 5121-5207), (see [FAR subpart 26.2](#)), when appropriate, along with applying other emergency acquisition flexibilities.

(c) Contracting officers should also use the Office of Federal Procurement Policy Guidelines - "[Emergency Acquisitions Guide](#)" for additional information and guidance.

M818.271 National Interest Exemptions and National Interest Action Values

(a) Upon declaration of a major disaster (see [FAR 2.101](#)) or emergency (see [FAR 2.101](#)), contracting officers shall use the Department of Labor (DOL), National Interest Exemptions (NIEs) for the declared disaster or emergency, when applicable, an Acquisition Flash will be issued for notification purposes. Contracting officers shall make only the changes to clauses provided in the DOL, NIE exemption letter for the declared major disaster or emergency and shall use the exemptions only for the effective period established by DOL. The DOL, NIE letters may be found at the [OFCCP NIE webpage](#).

(b) Upon declaration of a major disaster (see [FAR 2.101](#)) or emergency (see [FAR 2.101](#)), contracting officers shall use the published National Interest Action (NIA) value to track relief contracts in the Federal Procurement Data System-Next Generation (FPDS-NG), when applicable, an Acquisition Flash will be issued for notification purposes. NIA values are found at the FPDS-NG [NIA Value Code webpage](#) and shall be used only for the period of time established for the value. Contracting officers are reminded to check the FPDS-NG NIA Value Code page for value code extensions.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M819—SMALL BUSINESS PROGRAMS

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M819.000 Scope of part.

Subpart M819.1 – Size Standards

M819.102 Small business size standards and North American Industry Classification System Codes

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M819—SMALL BUSINESS PROGRAMS

M819.000 Scope of part.

This part prescribes the VA's policies and procedures regarding small business programs.

Subpart M819.1 – Size Standards

M819.102 Small business size standards and North American Industry Classification System codes

(a)(2) 2022 NAICS codes must not be used in any solicitations, contracts, or orders placed against existing Enterprise wide and GSA contracts until SBA publishes corresponding size standards. Up to date SBA size standards can be found at <https://www.sba.gov/document/support--table-size-standards>.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

**PART M822—APPLICATION OF LABOR LAWS
TO GOVERNMENT ACQUISITIONS**

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Subpart M822.3—Contract Work Hours and Safety Standards Act

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Subpart M822.4—Labor Standards for Contracts Involving Construction

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M822.406-11	Contract terminations.
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Subpart M822.5—Use of Project Labor Agreements for Federal

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Subpart M822.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000

M822.604	Exemptions.
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Subpart M822.8—Equal Employment Opportunity

M822.803	Responsibilities.
M822.804	Affirmative action programs.
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M822.805	Procedures.
M822.807	Exemptions.

Subpart M822.12—[Reserved]

Subpart M822.13—Equal Opportunity for Veterans

M822.1305	Waivers.
M822.1308	Complaint procedures.

Subpart M822.14—Employment of Workers with Disabilities

M822.1403	Waivers.
M822.1406	Complaint procedures.

[Appendix M822-A](#) – Applicability of Construction Wage Rate Requirements Statute (Davis-Bacon Act) in Construction Contracts with Options

[Appendix M822-B](#) – Investigations – Procedures, Guidance and Information

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

**PART M822—APPLICATION OF LABOR LAWS
TO GOVERNMENT ACQUISITIONS**

M822.001 Definitions.

“Labor advisor,” as used in this part, means the VA Labor Advisor appointed by the Office of Acquisition and Logistics (OAL). A list of agency labor advisors is posted on [Department of Labor internet site](#).

Subpart M822.1—Basic Labor Policies

M822.101 Labor relations.

M822.101-1 General.

(a) Contracting officers shall obtain approval from the Labor Advisor before –

(1) Contacting a national office of a labor organization, a Government agency headquarters, or any other organization (e.g., local unions) on labor relations matters or disputes; or

(2) Making recommendations for injunctive action relating to potential or actual work stoppages or plant seizure.

(e) Any action containing the FAR clause [52.222-1](#), Notice to the Government of Labor Disputes, requires contractors to report actual or potential labor disputes to the contracting officer.

M822.101-3 Reporting Labor Disputes.

Contracting officers shall notify the VA Labor Advisor, of any potential or actual labor disputes that may interfere with performing any contracts or orders under its cognizance in accordance with head of the contracting activity (HCA) procedures.

M822.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer shall, before initiating any action and before removing any items from the facility—

(1) Contact the Labor Advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations.

(2) Upon the recommendation of the Labor Advisor, provide a written request for removal of the material to the respective contract administration office;

(3) With the assistance of the VA Labor Advisor, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means; and

(4) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a)(1) through (a)(3) of this subsection, refer the matter to the Labor Advisor. If the Labor Advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the HCA. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the HCA, on a non-delegable basis, may order removal of the items from the facility.

M822.101-70 Impact of labor disputes on Veteran Affairs programs and requirements.

(a) If the dispute involves a project (including construction), service or product required to meet schedules for urgently needed VA programs or requirements, the applicable HCA shall consider the degree of impact of the labor dispute, and shall obtain and develop data reflecting the impact of the labor dispute. Upon determining the impact, the HCA shall submit a report of findings and recommendations to the [VA Labor Advisor](#).

(b) The report to the Labor Advisor shall be in narrative form and shall include -

(1) The location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources for the supply or service which are able to deliver within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The HCA shall submit impact reports to the Chief Acquisition Officer (CAO) through the VA Labor Advisor and Associate Executive Director (AED) for Procurement Policy, Systems and Oversight when-

(1) Specifically requested; or

(2) The HCA considers the impact to warrant the attention of the CAO.

(d) The VA Labor Advisor shall recommend a course of action to the CAO and require the HCA to expand the impact report submitted under paragraph (c) of this subsection by addressing the following, as appropriate -

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(1) Description of VA program, project, or service. Identify item, project, or service that will be or is being affected by the work stoppage. Describe its normal use and current functions; and

(2) Requirements and assets. Identify the following requirements and assets in appropriate detail in terms commonly used by the VA.

(i) For programs, include requirements for each VA requiring official. Where applicable, state in detail program schedule, inventory objectives, assets against these objectives, and critical shortages.

(ii) For any projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on VA capability to accomplish its daily mission.

(iii) For services, describe how a loss or interruption affects the ability to support VA operations.

(3) Possible measures to minimize strike impact. Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from one VA facility to another VA facility to relieve deficits in some areas of urgency.

(4) Conclusion.

(i) Describe the impact on VA operations of a 15-30, 31-60, and a 61-90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time shall be stated in terms of calendar days.

M822.102 Federal and State labor requirements.

M822.102-1 Policy.

(a) Contracting officers shall direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the DOL.

(b) Contracting officers shall not initiate any application for the suspension or relaxation

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of labor requirements without prior coordination with the Labor Advisor. OSHA must approve requests for any variance or alternate means of compliance with OSHA requirements.

M822.103 Overtime. M822.103-4 Approvals.

The HCA is the designated approving official. The HCA may delegate overtime approval authority to a level no lower than the contracting officer.

Subpart M822.3—Contract Work Hours and Safety Standards Act

M822.302 Liquidated damages and overtime pay.

(c) If the HCA finds that the administratively determined liquidated damages due under paragraph (a) of [FAR 22.302](#) are incorrect, or that the contractor or subcontractor inadvertently violated the Contract Work Hours and Safety Standards Act despite the exercise of due care, the HCA may --

(1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less; or

(3) For liquidated damages above \$500, prepare and submit a request to the Labor Advisor to endorse and forward to the SPE/AED a recommendation that the Secretary of Labor reduce or waive liquidated damages over \$500.

M822.302-70 Contract work hours and safety standards violations and liquidated damages.

(a) The contracting officer, upon receipt of notification of Contract Work Hours and Safety Standards violations shall -

(1) Provide instructions to the supporting finance officer whether to withhold funds from contract payments pending final administrative determination;

(2) Notify the Finance Office of any final decision to assess liquidated damages; and

(3) Advise the contractor in writing of any decision to withhold funds, including the reasons for the withholding, and the amount held to satisfy the contractor's liability for unpaid wages and liquidated damages.

(b) If the contractor protests either that the sum determined is incorrect or that the violations were inadvertent, notwithstanding the exercise of due care, the contracting officer shall advise the contractor of its right to appeal this action to the Secretary of Veterans Affairs under the provision of section 104(c) of the [Contract Work Hours and Safety Standards Act](#). The contracting officer shall also advise the contractor that the appeal shall be taken under section 104(c) and not under the Disputes clause of the contract. If the

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protest is made orally to the contracting officer, the contracting officer shall advise the contractor to submit its appeal, in writing, within 60 days after receipt of the contracting officer's decision. Should the protest be in writing, however, the contracting officer shall treat the letter of protest as an appeal. In each instance, the contracting officer shall forward the written protest or appeal through the HCA to the VA Labor Advisor. Coordinate all written communications with the contractor, including the notification of dispute resolution procedures under the DOL's regulations at [29 CFR Parts 4 through 8](#), with the support of legal counsel.

(c) The assessment shall become the final administrative determination of contractor liability for liquidated damages when -

(1) The contractor fails to appeal to the contracting agency within 60 days after the date of the withholding of funds;

(2) The SPE, following the contractor's appeals, issues a final order which affirms, reduces or waives the assessment of liquidated damages of \$500 or less; or

(3) The Secretary of Labor takes final action on the Secretary of Veterans Affairs' recommendation to waive or adjust liquidated damages in excess of \$500. Also see M822.406-9, Withholding from or suspension of contract payments.

(d) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed to the Government as liquidated damages to the servicing finance officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor ([see 29 CFR 5.8](#)).

Subpart M822.4—Labor Standards for Contracts Involving Construction

M822.402 Applicability.

M822.402-70 Veterans Affairs facilities support contracts.

(a) See [Department of Labor User's Guide](#), to obtain appropriate Service Contract Labor Standards (historical title: Service Contract Act) and/or the Construction Wage Requirements statute (historical title: Davis-Bacon Act (DBA)) wage determinations for each official solicitation, re-solicitation, option, extension or any other contract action requiring the most recent and applicable wage determination. Apply both the Service Contract Labor Standards and the Construction Wage Requirements statute (DBA) to VA support contracts if -

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and;

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed \$2,000 (for DBA applicability) or \$2,500 (for Service Contract Act applicability)

(b) *Service Contract Labor Standards coverage under the contract.* VA hospital, facility

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and, medical center support requirements, such as facility operations and installation services (i.e., custodial, snow removal, grounds maintenance etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) *Construction Wage Rate statute (DBA) coverage under the contract.* Contracts for construction, alteration, renovation, painting, and repair requirements (e.g., roof shingling, building structural repair, paving repairs, etc.) are subject to the Construction Wage Rate statute requirements (DBA). Apply the applicable clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) *Repairs versus maintenance.* Some contract work may be characterized as either Construction Wage Rate statute applicable (DBA painting/repairs) or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the Service Contract Labor Standards. In those instances where a contract service call or order requires construction trade skills (e.g., carpenter, plumber, painter, etc.), but it is unclear whether the work required is Service Contract Labor Standards maintenance or DBA painting/repairs, apply the following rules:

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the Service Contract Labor Standards.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the Construction Wage Rate.

M822.403 Statutory and regulatory requirements.

M822.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor (DOL) regulations to the [VA Labor Advisors](#).

M822.403-70 Construction Wage Rate Requirements statute application.

(a) In accordance with [FAR 22.403-1](#), the Construction Wage Rate Requirements statute (Davis-Bacon Act (DBA)) applies to contracts in excess of \$2,000 to which the United States or the District of Columbia (D.C.) is a party for construction, alteration, and/or repair, including painting and decorating, of public building or public works of the United States or the District of Columbia. The Construction Wage Rate Requirements statute requires that all laborers and mechanics employed on the site of the project be paid not less than the wages and fringe benefits determined by the DOL to be prevailing in the area.

(b) Four elements are required for DBA to apply:

(1) *Public building or public work.* Public buildings include the building structure and all utility systems and other improvements to the structure. This includes plumbing, electrical, and lighting systems, fire alarm and suppression systems, heating, ventilation and air conditioning systems, elevators, material handling systems, built-in cranes, hoists, attached antennas, etc. Public works are structures and improvements other than buildings, such as roads, runways, bike-paths, storage tanks, wells, exterior portions of utility systems, exterior pools, playgrounds, playing courts, antennas not attached to a building, etc., “Public” does not require access by the general public.

(2) *Party to contract.* The courts have ruled that the Construction Wage Rate Requirements (DBA) also applies to many “lease construction” contracts under which construction is funded by third parties such as banks. See [DOL memorandum number 176](#) dated 11 Jan 17. The government merely contracts to lease the completed facilities at a specified rate for a specified number of years. The statute would also apply to so-called “no cost” improvements to public buildings performed by utility companies (such as installation of energy-efficient lighting- the cost of which is deducted from future savings).

(3) *United States or D.C.* The Construction Wage Rate Requirements statute (DBA) applies only within the 50 states and D.C. It does not apply to Federal construction contracts in Guam, Puerto Rico, Virgin Islands or other territories, although other laws may invoke DBA on certain civilian projects there.

(4) *Construction, Alteration, or Repair and Painting and Decorating.* Construction, alteration, repair, painting, or decorating does not include regularly-recurring, routine maintenance of public buildings and works. Alteration involves making a relatively permanent improvement to a building or work. Repair goes beyond maintenance, and is usually performed to return something to operational use rather than to keep it operating.

Example: overhaul of an elevator is much more extensive than simple maintenance, and shall be considered repair. Renovation also goes beyond maintenance.

Example: replacing several cracked windowpanes is a maintenance task but replacing all windowpanes in a building or part of a building shall be considered renovation subject to the statute.

(c) All painting other than minor touch-up following routine maintenance is subject to the Construction Wage Rate Requirements statute (DBA). The statute also covers decorating,

which may involve wallpapering, paneling/wainscoting, installation of decorative ironwork, wood trim, etc.

M822.404 Construction Wage Rate Requirements statute wage determinations.

The Office of Construction and Facilities Management provides information on the Construction Wage Rate Requirements statute (historical title: Davis Bacon Act or DBA) Wage Rate Determination at the following link:

[Http://www.cfm.va.gov/contract/WageRate.asp](http://www.cfm.va.gov/contract/WageRate.asp). This website contains information and guidance pertaining to contract work to be performed that is not covered under any classification listed in the wage determination.

M822.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.

For guidance pertaining to the applicability of DBA for construction contracts with options see Appendix M822-A.

M822.404-70 Annual reporting of planned VA construction projects.

(a) Not later than April 1 of each year each HCA shall submit, through the VA Labor Advisor, a consolidated list of approved construction projects (to include construction maintenance and repair projects) subject to the Construction Wage Rate Requirements statute (DBA) for which contracts are proposed to be awarded by subordinate contracting offices in the ensuing fiscal year to: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, DC 20210. The DOL uses this information to determine where general wage determination surveys will be conducted.

(b) During the fiscal year, the HCA shall notify the VA Labor Advisor of any significant changes in their proposed construction programs as reported to DOL. The report format is contained in DOL All Agency [Memo 144, December 27, 1985, \(see 29 CFR 1.4\)](#).

(1) Indicate by individual project of \$500,000 or more -

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report control number is 1671-DOL-AN.

M822.405 [Reserved]

M822.406 Administration and enforcement.

M822.406-1 Policy.

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(a) *General.* The contracting officer shall inform the prime contractor of the necessity to include labor standard clauses in all subcontracts with a preconstruction letter or at the preconstruction conference (see 29 CFR 5.5(a)(6)). The contracting officer shall document the discussion of the requirement to include labor standard clauses in all subcontracts at a preconstruction conference. Contracting officers shall file the documentation of the discussion in the respective Electronic Contract Management System (eCMS) contract file briefcase.

(b) *Preconstruction letters and conferences*

(1) Promptly after award of the contract, the contracting officer shall hold a preconstruction conference with the prime contractor or provide a letter to the prime contractor that accomplishes the following, as appropriate:

(i) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations:

(A) [Davis–Bacon Act](#). (Now known as the Construction Wage Rate Requirements statute.)

(B) [Contract Work Hours and Safety Standards statute](#). (Historical title: Contract Work Hours and Safety Standards Act.)

(C) [Copeland \(Anti-Kickback\) Act](#). (Now referred to simply by the title “Kickbacks.”)

(D) Parts 3 and 5 of the Secretary of Labor's Regulations ([Part 3](#) and [Part 5](#), Subtitle A, Title 29, CFR).

(E) [Executive Order 11246](#) (Equal Employment Opportunity).

(ii) Call attention to the labor standards requirements in the contract which relate to-

(A) Employment of foremen, laborers, mechanics, and others;

(B) Wages and fringe benefits payments, payrolls, and statements;

(C) Differentiation between subcontractors and suppliers;

(D) Additional classifications;

(E) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(F) Penalties and sanctions for violations of the labor standards provisions;

(G) The applicable provisions of [FAR 22.403](#); and

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(iii) Ensure that the contractor sends a copy of the preconstruction letter or minutes of the preconstruction meeting to each subcontractor.

(2) Before construction begins, the contracting officer shall advise the prime contractor and any subcontractor designated by the prime of the labor standards obligations under the contract when:

(i) The prime contractor has not performed previous Government contracts;

(ii) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(iii) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment.

(3) The Payroll Form [WH-347](#), and, [Instruction for Completing Payroll Form WH-347 347](#), developed by the Department of Labor, may be used as the basis of the discussion.

M822.406-6 Payrolls and statements.

(c) Examination.

(1) The contracting officer or the authorized Contracting Officer's Representative (COR) shall make the examination required by [FAR 22.406-6\(c\)](#) as appropriate. The contracting officer shall assure each pay period is accounted for and that each weekly payroll contains the information required. The COR shall, with each payroll submission, certify the rates of pay comply with the contract wage determination and the labor standards provisions. In the event payrolls are not received within the time specified by the COR, the COR shall inform the contracting officer. The contracting officer shall take immediate action to secure the payroll submission. The contracting officer shall include the COR requirement to perform the examination required by [FAR 22.406-6\(c\)](#) in the COR appointment letter.

(d) *Preservation.* The contracting officer shall file and maintain completed and signed copies of payrolls and statements of compliance (Form WH 347) submitted pursuant to [FAR 22.406-6](#) in the respective eCMS briefcase, (see [29 CFR 5.6\(a\)\(3\)](#)).

M822.406-8 Investigations.

(a) The contracting officer shall authorize investigations necessary to ensure contract compliance. The contracting officer, COR, or other government official shall conduct the investigation.

(b) Before beginning an investigation, the investigator shall inform the contractor that a labor standards investigation is being performed, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at Appendix M822-B.

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(c) *Contractor notification.* Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards (CWHSS) statute. The notification shall inform the contractor that -

(1) They have 60 days after receipt of the notice to appeal the assessment of liquidated damages;

(2) The appeal shall demonstrate either that the alleged violations did not occur, but occurred inadvertently notwithstanding the exercise of due care, or that the assessment was computed improperly; and

(3) If an appeal is received, the contracting officer shall process the appeal in accordance with department and/or agency regulations

(d) *Contracting officer's report.* Forward a detailed enforcement report or summary report to the Labor Advisor in accordance with HCA procedures. Include in the report, as a minimum, the information specified at Appendix M822-B paragraph (8). Use Standard Forms (SF) 1445 [Labor Standards Interview](#), and [SF 1446, Labor Standards Investigation Summary Sheet](#), to document regular investigations and employee interviews to assure contractors' compliance with labor standards in construction contracts.

M822.406-9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the Labor Advisor for assistance when payments due to a contractor are not available to satisfy that contractor's liability for Wage Rate Requirements (IAW 48 CFR 222.406-9) statute wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.* See M822.302-70.

M822.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) The contracting officer shall provide any findings along with the contractor's statement to the Labor Advisor for submission to the Administrator, Wage and Hour Division in accordance with HCA procedures.

M822.406-11 Contract terminations.

Prior to terminating any contract or subcontract for violation of the labor standards clauses, the contracting officer shall, in consultation with the Labor Advisor, prepare a detailed report that documents the facts and circumstances surrounding the violation. The

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contracting officer shall obtain a legal review of the proposed termination from the supporting Office of General Counsel (OGC). The report and results of the legal review will be forwarded to the SPE/AED for further review. If the contract is to be terminated, the SPE/AED shall submit the report as required by [FAR 22.406-11](#) to DOL's Administrator, Wage and Hour Division, and the Comptroller General.

M822.406-13 Semiannual enforcement reports.

(a) The HCA shall forward semiannual reports to the VA Labor Advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the DOL. The Labor Advisor will consolidate these reports into an agency report, which will be submitted to the DOL not later than April 30 and October 31 of each year. A negative report is required. These reports shall contain the following information, as applicable, for construction work subject to the DBA and the CWHSS statute:

- (1) Period covered.
- (2) Number of prime contracts awarded.
- (3) Total dollar amount of prime contracts awarded.
- (4) Number of contractors/subcontractors against whom complaints were received.
- (5) Number of investigations conducted.
- (6) Number of contractors/subcontractors found in violation.
- (7) Amount of wage restitution found due under—
 - (i) Construction Wage Rate Requirements statute; and
 - (ii) CWHSS statute.
- (8) Number of employees due wage restitution under—
 - (i) Construction Wage Rate Requirements statute; and
 - (ii) CWHSS statute.
- (9) Amount of liquidated damages assessed under the CWHSS statute—
 - (i) Total amount; and
 - (ii) Number of contracts involved.
- (10) Number of employees and amount paid/withheld under—
 - (i) Construction Wage Rate Requirements statute;

(ii) CWHSS statute; and

(iii) Copeland Act.

(11) Preconstruction activities—

(i) Number of compliance checks performed; and

(ii) Preconstruction letters sent.

M822.406-70 Reports of violations.

(a) *Reports of violations--regular investigations.* Each non willful violation involving the Contract Work Hours and Safety Standards Act, which has been corrected, but which requires the assessment of liquidated damages, will be reported to the SPE. Based on the facts of the case, the contracting officer shall submit a recommendation with the report as to whether the contractor should be relieved of this liability.

(b) *Reports of violations--special investigations.*

(1) Reports of investigations conducted by the DOL are submitted by their Washington office to the SPE. After review by the SPE (and except as provided in paragraph (c)(2) of this section), the report will be furnished to the contracting officer concerned for necessary action together with such advice and guidance as may be indicated.

(2) If the investigation report indicates possible violations of a criminal nature, the SPE will forward the report to the VA Inspector General for investigation and referral to the Department of Justice. In the event the case is submitted to the Department of Justice, the contracting officer and the Department of Labor will be so advised by the SPE. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. attorney concerned, through the Inspector General.

(3) The contracting officer shall review the report of investigation and complete the actions indicated therein. The contracting officer will submit a report of the actions taken to SPE, with recommendations regarding the assessment of liquidated damages and the imposition of sanctions. The SPE will, after reviewing this report, submit a report to the DOL of the actions taken, together with recommendations for any suggested actions to be taken by that agency.

(c) *Reports control exemption.* The reports referred to in paragraphs (a) and (b) of this section are exempt from reports control.

Subpart M822.5—Use of Project Labor Agreements for Federal Construction Projects

M822.503 Policy.

(a) VA planners shall consider whether a Project Labor Agreements (PLA) requirement shall be included for construction contract actions associated with large-scale projects and document the results based on an objective analysis. VA's contracting officers shall refer to and follow FAR Subpart 22.5, Use of Project Labor Agreements when necessary. If a PLA requirement is included in the solicitation, the contracting officer shall ensure any additional requirements under [FAR 22.504\(b\)\(6\)](#) or any prescribed terms and conditions under [FAR 22.504\(c\)](#) were coordinated with supporting OGC and are explained in the file memorandum.

(b) In cooperation with the program office or project manager, the contracting officer shall ensure that the acquisition plan properly identifies each construction contract action associated with a large-scale project if the estimated value is \$25 million or greater. The contracting officer will prepare a file memorandum reflecting rationale for the PLA decision (either for or against) and have it approved by the HCA or the HCA's designee. The appropriate PLA provision and clause shall be included in the solicitation/contract when a PLA will be required.

(c) *Factors to Consider and Documentation.* In addition to the factors at [FAR 22.503](#), the following may be used to assist VA planners in determining whether requiring a PLA is in the best interest of the government and the specific terms and conditions the offeror/contractor shall include in the PLA itself:

(1) Solicit and document PLA recommendations from industry professionals in the local community where the project will be located.

(2) Request the Architect/Engineer provide information to the project manager, during each design phase, regarding current local market/economic conditions and labor shortages, as well as information on whether PLAs were used successfully in the project area.

(3) Issue a Sources Sought announcement seeking PLA input from industry or state/local governmental entities. A pre-solicitation conference also may be used to obtain similar information.

(4) Using a market survey, determine if other state or Federal construction projects will be competing for the same labor pool.

(5) Determine how a PLA could impact project budget and schedule either positively or negatively.

(6) Use any other reliable public information available to assist in the determination whether use of a PLA is in the best interest of the government.

**Subpart M822.6—Contracts for Materials, Supplies, Articles,
and Equipment Exceeding \$15,000**

M822.604 Exemptions.

M822.604-2 Regulatory exemptions.

(b) Contracting officers shall submit any requests for regulatory exemptions to the VA Labor Advisor in accordance with HCA procedures.

Subpart M822.8—Equal Employment Opportunity

M822.803 Responsibilities.

(c) The VA Labor Advisor is responsible for ensuring that the requirements of [FAR 22.8](#) are carried out within the agency, and for cooperating with and assisting the Office of Federal Contractor Compliance Programs (OFCCP) in fulfilling its responsibilities.

(d) In the event the applicability of Executive Order 11246 and implementing regulations are questioned, the contracting officer through the HCA shall forward the matter through the VA Labor Advisor to the Associate Executive Director for Procurement Policy, Systems and Oversight for resolution.

M822.804 Affirmative Action Programs.

M822.804-2 Construction.

(b) The list of geographical areas subject to affirmative action requirements can be obtained from the OFCCP, U.S. Department of Labor. Contracting officers contemplating a construction project in excess of \$10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the [OFCCP regional office](#).

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award of a construction contract subject to affirmative action requirements in accordance with HCA procedures. A list of OFCCP regional office is provided at <http://www.dol.gov/ofccp/contacts/regkeyp.htm>.

M822.805 Procedures.

(a) The contracting officer shall include the value of the basic contract plus priced options to determine whether the contract meets the threshold in [FAR 22.805\(a\)](#). A contract modification exercising a priced option is not a contract award under [FAR 22.805\(a\)\(1\)\(ii\)](#) and does not require a preaward clearance. Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. The content of preaward clearance request is prescribed by [FAR 22.805\(a\)\(5\)](#). See [FAR 22.805\(a\)\(6\) and \(7\)](#) for timelines delineated for the submission of requests for preaward clearance to OFCCP and receipt of OFCCP's response.

(b) The EEO poster required by [FAR 22.805\(b\)](#) can be found at: <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>.

M822.807 Exemptions.

(c) When seeking an exemption from the requirements of [Executive Order 11246](#), submit the request with a justification through the HCA to the VA Labor Advisor, who will forward the request to the SPE. If the request is submitted under [FAR 22.807\(a\)\(1\)](#), the SPE shall act on the request. If the exemption is granted, the SPE shall notify the Director, OFCCP, of such action within 30 days. If the request is submitted under [FAR 22.807\(a\)\(2\) or \(b\)\(5\)](#), the SPE will forward it to the Director, OFCCP, for action.

Subpart M822.12—[Reserved]

Subpart M822.13—Equal Opportunity for Veterans

M822.1305 Waivers.

(c) The contracting officer shall submit a request to the Labor Advisor, in accordance with HCA procedures, when seeking a waiver against the terms at FAR clause [52.222-35](#), Equal Opportunity for Veterans. If the request is justified; the Labor Advisor will endorse and forward the request, through the AED, for action by the Secretary of Veterans Affairs. The AED shall notify the Deputy Assistant Secretary of Labor of the waiver in writing within 30 days.

M822.1308 Complaint procedures.

(a) The contracting officer shall –

(1) Forward any complaints received about the administration of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 ([38 U.S.C. 4211](#) and [4212](#)) (the Act) to the Veterans' Employment and Training Service of the Department of Labor and OFCCP regional office in accordance with HCA procedures; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or that the complaint was received.

Subpart M822.14—Employment of Workers with Disabilities

M822.1403 Waivers.

(c) The contracting officer shall submit a request for waivers under [FAR 22.1403\(a\)](#) and [FAR 22.1403\(b\)](#), to the Labor Advisor. If the request is justified, the Labor Advisor will endorse and forward the request, through the AED, for action by the Secretary of Veterans Affairs, and for submission for DOL concurrence.

M822.1406 Complaint procedures.

DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Rehabilitation Act of 1973 (the Act) to the—

Deputy Assistant Secretary for Federal Contract Compliance
200 Constitution Avenue, NW
Washington, DC 20210,

or to any OFCCP regional or area office. The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record. The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or that the complaint was received.

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.
M823.002-70 VA Policy.

Subpart M823.1—Sustainable Acquisition Policy

M823.103-70 Authority.
M823.103-71 Procedures.
M823.103-72 Contract File

Subpart M823.2—Energy and Water Efficiency and Renewable Energy

M823.202-70 VA Policy.
M823.204 Procurement exemptions.

Subpart M823.4—Use of Recovered Materials and Biobased Products

M823.403 Policy.
M823.404 Agency affirmative procurement program.

Subpart M823.5—Drug-Free Workplace

M823.504-70 Policy.

Subpart M823.6—Notice of Radioactive Material

M823.600 VA's management of radioactive materials.

Subpart M823.7—Contracting for Environmentally Preferable Products and Services

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Subpart M823.8—Ozone-Depleting Substances

M823.803 Policy.

Subpart M823.9—Contractor Compliance with Environmental Management Systems

M823.902 Policy.

Subpart M823.10—Federal Compliance with Right-To-Know Laws and Prevention Requirements

M823.1000-70 Strategies and tools.

SUBCHAPTER G—SOCIOECONOMIC PROGRAMS

PART M823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

M823.002-70 VA Policy.

(a) VA is committed to being a good steward of the environment by always thinking “green” at the start of the acquisition process (see [FAR part 7](#)/VAAR part 807--Acquisition Planning, [FAR part 8](#)/VAAR part 808--Required Sources of Supplies and Services, and [FAR part 10](#), VAAR part 810—Market Research). Green purchase requirements apply to—

(1) All Federal agencies and their contractors. Information on ENERGY STAR, energy efficient, water efficient and low standby products covered by this policy is available via the following internet sites:

- [Federal Energy Management Program;](#)
- [Energy Saving Building and Manufacturing;](#)
- [Energy Star; and,](#)
- [WaterSense.](#)

(2) Simplified acquisitions (see [FAR part 13](#)/VAAR part 813).

(3) Micro-purchases (see [FAR 2.101/13.101](#) and VAAR part 802/813).

(4) VA’s Governmentwide commercial purchase cardholders (see [FAR 13.301](#)) and VA Financial Policy, (see [Volume XVI, Charge Card Programs](#)).

(5) Acquisition of Commercial Items (see [FAR part 12](#)/VAAR part 812).

(6) Large purchases (see [FAR part 16](#)/VAAR part 816; [FAR part 36](#)/VAAR part 836, Construction and Architect-Engineer Contracts and [FAR part 37](#)/VAAR part 837, Service Contracts).

(b) The Office of Acquisition and Logistics [Green Purchasing Program website](#) contains the following helpful and comprehensive green purchase policy and guidance: (1) Green Purchasing Home, (2) Environmental Performance and Sustainability Factors (Green Purchasing Program Components), (3) Greening the Acquisition Planning Process, (4) Green Purchasing Communications, and (5) Green Purchasing Resources, Tools, and Training.

(c) VA contracts for the operation of government-owned facilities or vehicles shall require the contractor to comply with the provisions in VA Directive and Handbook 0058, [VA Green Purchasing Program](#).

(d) Green products and services are widely available from required sources. Once the specifications, including specific requirements regarding environmental attributes are finalized, the contracting officer shall comply with the VA Vets-First Contracting Program before checking for availability from the required sources described in [FAR part 8/VAAR part 808--Required Sources of Supplies and Services](#).

(e) The “Green Procurement Compilation (GPC)” shall be used during market research to help determine federal sustainable acquisition (green purchasing) requirements relevant to the intended contract action. The GPC is a free, public website that identifies federal green purchasing requirements and provides other guidance for the procurement of sustainable products and services and effective development of green procurement strategies. Access the GPC [online](#).

Subpart M823-1—Sustainable Acquisition Policy

M823.103-70 Directives, handbooks, and other guidance.

- (a) VA Directive 0055, [VA Energy and Water Management Program](#).
- (b) VA Directive and Handbook 0056, [VA Sustainable Buildings Program](#).
- (c) VA Directive 0057, [VA Environmental Management Program](#).
- (d) VA Directive and Handbook 0058, [VA Green Purchasing Program](#), which together comprise the VA Green Purchasing (Affirmative Procurement) Program.
- (e) VA Directive and Handbook 0059, [VA Chemicals Management and Pollution Prevention](#).

M823.103-71 Procedures.

(a) In accordance with VA Directive and Handbook 0058, [VA Green Purchasing Program](#) (GPP), the contracting officer shall purchase green products and services to the maximum extent practicable and advance sustainable acquisition by ensuring that 95 percent of new contract actions (including task and delivery orders) for the supply of products and for the acquisition of services (including construction) meet the requirements of the GPP.

Additionally, procurement offices will require vendors to provide an estimate of the total recycled content of their products and to certify that the recycled content will meet the minimum content standards on U. S. Environmental Protection Agency (EPA) [Comprehensive Procurement Guideline](#) (CPG) designated items.

Procurement offices will also require vendors to certify that biobased products (within [categories of products](#) listed by the U.S. Department of Agriculture (USDA) to

be used or delivered in the performance of the contract comply with applicable specifications or other requirements in the VA contract.

(b) To assess government-wide compliance with the 95 percent sustainable acquisition goal, the Office of Management and Budget (OMB) directed all Federal agencies to review at least five percent of their total applicable contracts on a quarterly basis and to report on the progress as part of the semiannual OMB Sustainability/Energy Scorecard and annual agency Strategic Sustainability Performance Plan, and/or other OMB- or Council on Environmental Quality-mandated reports. Therefore—

(1) VA Administrations and appropriate staff offices shall conduct sustainable contract reviews in response to a data call from the Office of Asset Enterprise Management (OAEM/044).

(2) The Heads of the Contracting Activity (HCAs) shall—

(i) Track the results of applicable contracts reviewed within their purview to identify trends related to non-compliance and initiate corrective action;

(ii) Disseminate the information to members of the VA acquisition workforce and remind contracting officers and contracting specialists of their responsibilities with regard to green purchasing; and

(iii) Designate a primary and alternate “Green Purchasing Program Advocate (GPPA)” to represent their respective organizations. The primary and alternate GPPAs shall be contracting officers, contracting specialists, or other appropriate technical members of the acquisition workforce and shall serve as the organization’s points of contact for green purchasing implementation to the Office of Acquisition and Logistics, Procurement Policy and Warrant Management Service, and to OAEM, Energy Management Program Service.

(3) The contracting officer shall—

(i) Review all procurement requests to ascertain whether green products or services are or should be involved in the procurement action;

(ii) Provide guidance to program/project management functions (centralized or otherwise), procurement request originators, and others as required, and facilitate acquisition planning with respect to green products and services;

(iii) Ensure that all appropriate FAR provisions and clauses for green products and services are incorporated into contract actions and modifications including, but not limited to, solicitations, evaluations, and awards (where and as applicable), and that the statement of work (SOW) and all other pertinent contract sections contain appropriate green purchasing requirements languages;

(iv) Enter the appropriate information into the green purchasing data fields in the Federal Procurement Data System-Next Generation, the VA Electronic Contract Management System (eCMS), and other databases operated by procurement organizations;

(v) Incorporate, when evaluated, the contractor's final Sustainable Acquisition Plan, as discussed in VAAR 823.103-70—Policy, into the contract eCMS; and

(vi) Maintain all the required documents in the contract file (including recovered materials estimates, certifications, and written justifications for exemptions provided under law) and populate the eCMS briefcase with all applicable green requirements documentation (SOW/performance of work statement, certifications, etc.).

(4) The GPPA shall serve as a resource for their respective organization to—

(i) Ensure awareness of sustainable acquisition requirements;

(ii) Consult in the development of green contract requirements;

(iii) Share best practices;

(iv) Coordinate education/training and promotional activities;

(v) Identify and assist with recognition opportunities; and

(vi) Coordinate responses to reports and other data requests.

(c) VA contracts for operation of government-owned facilities or vehicles shall require the contractor to comply with the provisions of VA Directive 0058 with respect to such facilities or vehicles to the same extent as the Administration or staff office would be required to comply if the Administration or staff office operated the facilities or vehicles.

M823.103-72 Contract file.

When one is required, the contracting officer shall place the contractor's final Sustainable Acquisition Plan into the contract file in eCMS.

Subpart M823.2—Energy and Water Efficiency and Renewable Energy

M823.202-70 VA Policy.

(a) VA Directive 0012, VA Investments in Energy and Water Efficiency and Renewable Energy.

- (b) VA Directive 0055, [VA Energy and Water Management Program](#).
- (c) VA Directive and Handbook 0056, [VA Sustainable Buildings Program](#).
- (d) [VA's Energy and Water Management Program Website](#).

M823.204 Procurement exemptions.

The HCA is the agency head's designee for the purpose of executing the written determination not to purchase ENERGY STAR® or Federal Energy Management Program-designated products in accordance with [FAR 23.204\(a\) or \(b\)](#).

Subpart M823.4—Use of Recovered Materials and Biobased Products

M823.403 Policy.

(a) Mandatory federal purchasing requirements for products with recovered (recycled) materials were established in the Resource Conservation and Recovery Act of 1976 (section 6002, Pub. L. 94-580, 42 U.S.C. 6962). Purchasing requirements for recycled content products are detailed throughout the FAR including acquisition planning, mandatory purchasing by purchase card, source selection, mandatory contract clauses, and general policy and provisions.

(b) Federal law, the FAR, and Presidential Executive Orders direct that federal agencies purchase products with the highest percent of recovered material content practicable designated by the EPA. EPA designates products under the Comprehensive Procurement Guidelines (CPG) program. To date, EPA has designated 61 CPG products in eight categories for which agencies and their contractors have mandatory purchasing requirements. EPA recommends recycled content levels for CPG products in Recovered Materials Advisory Notices.

(c) Mandatory federal purchasing requirements for biobased products were established in the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), 7 U.S.C. 8102, and expanded in the 2008 and 2014 Farm Bills. Biobased purchasing requirements are detailed throughout the FAR including acquisition planning, mandatory purchasing by purchase card, source selection, mandatory contract clauses, and general policy and provisions.

(d) Federal law, the FAR, and Presidential Executive Orders direct that federal agencies purchase products with the highest percent of biobased content practicable designated by the USDA. As USDA identifies product categories for mandatory federal purchasing, minimum biobased content is established for the category.

(e) Where a product appears on both the EPA CPG list and the USDA BioPreferred® list (e.g., paint) and/or the sustainable acquisition requirements cannot

be met in the same product, remanufactured and recycled content should receive purchasing priority over biobased content.

M823.404 Agency affirmative procurement program.

[FAR 23.404\(a\)](#) requires agencies to establish an affirmative procurement program for EPA and USDA-designated items. Therefore, VA's affirmative procurement program is established by the requirements delineated in VA Directive and Handbook 0058, VA Green Purchasing Program, as part of the overarching VA Green Purchasing Program.

M823.406 Solicitation provisions and contract clauses.

(d) When [FAR clause 52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items, is included in a contract, insert the term "Contracting Officer" in paragraph (b)(2), or in paragraph (c)(2) if the clause is used with Alternate 1.

Subpart M823.5—Drug-Free Workplace

M823.504-70 Policy.

(a) VA Handbook 5383/4, VA Drug-Free Workplace Program, contains mandatory procedures on VA's Drug-Free Workplace Program.

(b) VA Handbook 5383/5, VA Drug-Free Workplace Program, contains revisions that implement new mandatory guidelines published by the Health and Human Services. The significant changes are—

- (1) Revised collection site procedures;
- (2) Modified procedures in Appendix II-B; and
- (3) Clarification to Appendix II-F, requires blind samples to be submitted using the same form used for donor specimen.

Subpart M823-6—Notice of Radioactive Material

M823.600 VA's management of radioactive materials.

(a) The provisions of VA Handbook 0059, VA Chemicals Management and Pollution Prevention, apply to all VA offices that purchase, store, handle, use, and dispose of hazardous chemicals/materials, but these provisions do not apply to the procurement, use, generation, storage, processing, disposal, or management of radioactive materials.

Subpart M823.7—Contracting for Environmentally Preferable Products and Services

M823.703 Policy.

(a) VA must procure environmentally preferable products through sources that offer advantages such as—

(1) Products that have been competitively bid (after complying with the Vets First acquisition program);

(2) Products that meet or exceed EPA minimum content requirements for recovered material;

(3) Products that meet or exceed USDA minimum content requirements for biobased content; and

(4) Electronic catalogs that identify green products.

(b) Additionally, these sources provide estimation, certification, and verification of EPA-designated items containing recovered materials and USDA-designated biobased products; thereby, reducing overhead costs to track and monitor vendor compliance. Established Government sources, such as the General Services Administration, Government Printing Office, AbilityOne, the Defense General Supply Center and UNICOR are competitive sources.

Subpart M823.8—Ozone-Depleting Substances

M823.803 Policy.

(a) The policy for the procurement of non-ozone depleting substances is established in section 612 of the amended Clean Air Act of 1990. The EPA's Significant New Alternative Policy (SNAP) is a program for evaluating alternatives to ozone-depleting substances and hydrofluorocarbons (HFCs). The program reviews alternatives to ozone depleting substances and HFCs and identifies acceptable use of alternatives, which do not present a substantially greater risk to public health and the environment than the substances they replace or than other available substitutes. SNAP provides lists of acceptable and unacceptable substitutes in the following industrial sectors: adhesives, coatings, and inks; aerosols; cleaning solvents; fire suppression and explosion protection; foam blowing agents; refrigeration and air conditioning; sterilants; and, tobacco expansion.

(b) The use of ozone-depleting compounds must be eliminated where alternatives, which have been identified by SNAP, are available and the air quality benefits of the alternative products are consistent with or equivalent to, the air quality benefits stated in the Montreal Protocol and Title VI of the Clean Air Act Amendments of 1990.

(1) No VA contract may include a specification or standard that requires the use of a class 1 ozone-depleting substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a member of the Senior Executive Service. This restriction is in addition to any imposed by the Clean Air Act and applies to all VA contracts, regardless of place of performance. Program Managers are responsible for identifying all ozone-depleting substances in their requirements packages and ensuring that the contracting officer receives the approved authorization as discussed above.

(2) Preference shall be provided to the purchase of non-ozone depleting substances, as identified in the SNAP program. VA shall specify and procure alternative products that reduce overall risks to human health and the environment. The use of safe alternatives to ozone depleting substances and HFCs, as deemed acceptable by the SNAP program, shall be maximized to the greatest extent possible.

Subpart M823.9—Contractor Compliance with Environmental Management Systems.

M823.902 Policy.

VA Handbook 0062, Environmental Compliance Management, outlines the procedures, processes, and other key elements necessary to facilitate VA's continual improvement of management performance with respect to environmental compliance and reporting. It also addresses environmental management systems (EMS); whereby, all VA facilities and appropriate organizations are required to be covered by an EMS. Each EMS shall

reflect the elements and framework found in ISO 14001 and be in accordance with VA Directive 0057, [Environmental Management Program](#), and VA Directive 0064, [Environmental Management Systems](#).

Subpart M823.10—Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements

M823.1000-70 Strategies and Tools.

(a) Finding Public Information on Chemicals—

EPA, along with other federal and international agencies, maintains the location of sites showing where to find information on: (1) whether and how chemicals are regulated, (2) what chemicals are in your community, and (3) what EPA and other agencies know about the health and environmental effects of specific chemicals.

(b) New Chemicals Program Policies—

EPA has established information sources on the [New Chemicals Program](#). The website offers information on how the pre-manufacture notice process works and other related programs.

(c) Existing Chemicals—

On this website, citizens, businesses and government regulators can find basic information on [Assessing and Managing Chemicals under TSCA](#), managing chemical risks, sources for finding public information on chemicals, collecting and assessing information on chemicals, and related EPA and international activities.

(d) National Waste Minimization Program—

EPA manages information on the [waste reduction](#), which focuses efforts on reducing 31 priority chemicals found in our Nation's products and waste by finding ways to eliminate or substantially reduce their use in production.

(e) Federal Green Challenge (FGC)—

The [EPA FGC website](#) contains information on how to conserve natural resources and energy by managing materials more sustainably. It also identifies the following national priorities or focus areas for the FGC: Electronics, energy, purchasing, transportation, waste, and water.

(f) Pollution Prevention—

The [EPA Pollution Prevention website](#) contains tools and information on chemical and chemical processes, environmentally preferable products, resource conservation, publications, outreach material, and all EPA databases and software.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart M824.1—Protection of Individual Privacy

Sec.

M824.102

General.

M824.103-70

Procedures for the Privacy Act.

Subpart M824.2—Freedom of Information Act

M824.203

Policy for Freedom of Information Act.

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M824— PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart M824.1—Protection of Individual Privacy

M824.102 General.

(a) Every two years the Office of Acquisition and Logistics will review a random sample of contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act binding on the contractor and his or her employees, pursuant to OMB Circular A-130, Appendix 1.

M824.103-70 Procedures for the Privacy Act.

(a) Contracting officers shall contact their Privacy Officer or Privacy Service designee for assistance and expertise on all matters related to privacy. Privacy Officer or Privacy Service designee information can be found at the [Office of Privacy and Records Management](#):

Email: privacyservice@va.gov
Address: 810 Vermont Avenue (005R1A)
Washington, DC 20420

(b) The contracting officer shall review all purchase request documentation to determine whether the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) are applicable. The program manager will be responsible for performing a Privacy Threshold Analysis and Privacy Impact Assessment in accordance with [VA Handbook 6508.1](#), Procedures for Privacy Threshold Analysis and Privacy Impact Assessment, to review and assess the privacy implications of information contained in VA information technology (IT) systems, programs or projects.

(c) *Applicability to System of Records.* The Privacy Act requirements apply when a contract or order requires the contractor to design, develop, or operate any Privacy Act system of records on individuals to accomplish an agency function. When applicable, the contracting officer shall include the clauses at [FAR 52.224-1](#), Privacy Act Notification, and [FAR 52.224-2](#), Privacy Act, as prescribed by [FAR 24.104](#), in solicitations, contracts, or orders. In addition, the contracting officer shall include the clauses and other pertinent information specified in this subpart, in any modification which results in the Privacy Act requirements becoming applicable to a contract or order.

(d) *Performance Work Statement or Statement of Work.* The contracting officer shall ensure that the statement of work (SOW) or performance work statement (PWS)

specifies the system(s) of records or proposed system(s) of records to which the Privacy Act and the implementing regulations are applicable or may be applicable.

(1) The contracting officer shall ensure that the contract SOW or PWS specifies the disposition to be made of the system(s) of records upon completion of contract performance in accordance with the Privacy Act and the Federal Records Act.

(2) The contract SOW or PWS may require the contractor to destroy the records, remove personal identifiers, or turn the records over to the contracting officer. If there is a legitimate need for a contractor to keep copies of the records after completion of a contract, the contractor must take measures, as approved by the contracting officer, to keep the records confidential and protect the individuals' privacy.

(e) *Requirement for a Federal Register "System Notice."* For any acquisition subject to Privacy Act requirements, the requiring activity prior to award shall prepare and have published in the Federal Register a "system notice," describing the Department of Veterans Affairs intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system. The requiring activity shall attach a copy of the system notice to the acquisition plan or other purchase request documentation. If a system notice is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the requiring activity for inclusion in the contract file. If a notice for the system of records has not been published in the Federal Register, the contracting officer may proceed with the acquisition but shall not award the contract until the system notice is published and the contracting officer verifies its publication.

Subpart M824.2— Freedom of Information Act

M824.203 Policy.

Contracting Officers or Contract Specialists shall provide unredacted responsive records to the cognizant Freedom of Information Act (FOIA) Officer per 38 C.F.R. § 1.555(a). As per page 7, paragraph e(4) of the FOIA Standard Operating Procedure, Contracting Officers or Contract Specialists must provide such within five (5) business days of the FOIA request.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M825—FOREIGN ACQUISITION

Sec.

M825.001 General.

Subpart M825.1—Buy American—Supplies

M825.103 Exceptions.

M825.104 Nonavailable Articles.

Subpart M825.2—Buy American—Construction Materials

M825.202 Exceptions.

Subpart M825.4—Trade Agreements

M825.402 General.

**Subpart M825.6—American Recovery and Reinvestment Act-Buy
American Statute-Construction Materials**

M825.603 Exceptions.

Subpart M825.10—Additional Foreign Acquisition Regulations

M825.1001 Waiver of right to examination of records.

Attachment

[M825-A, Implementing Buy American Job Aid](#)

[M825-B, Determination of Nonavailability](#)

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART M825—FOREIGN ACQUISITION

M825.001 General.

(e) *Reporting.* The VA is required to monitor its ability to maximize the use of goods and materials produced in the United States. As with all contract award data, the data elements that provide information on VA's use of goods and materials produced in or outside the United States must be accurate. Formal quarterly Federal Procurement Data System audits are conducted in accordance with OMB Memorandum 'Improving Federal Procurement Data Quality – Guidance for Annual Verification and Validation,' dated May 31, 2011, which currently includes Buy American data. VA's Office of Acquisition and Logistics will conduct annual reviews to ensure compliance.

(f) *Implementing the Buy American Act—Job Aid.* Contracting officers are encouraged to use the Implementing Buy American Job Aid, [Attachment M825-A](#), when determining the proper provisions and clauses to include in solicitations and contracts. The job aid also helps determine the applicability of the Buy American Statute and Trade Agreements.

(g) *Training on Buy American Laws.* Courses from the Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) are accessible through Cornerstone on Demand (CSOD). Contracting officers and other acquisition professionals obligating funds on behalf of VA are encouraged to take FAI courses that cover implementation of the Buy American statute.

Subpart M825.1—Buy American—Supplies

M825.103 Exceptions.

(a) *Public interest.* For a determination under [FAR 25.103\(a\)](#), the contracting officer shall submit the request containing all supporting facts and other pertinent information to the Senior Procurement Executive (SPE). Upon SPE approval, the request will be forwarded to the Secretary.

(b) *Nonavailability.*

(1) *Class determinations.* If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer shall forward the determination with supporting documentation to the SPE for approval along with a recommendation to the Civilian Agency Acquisition Council (CAAC) Chair to add the item(s) to the list of nonavailable articles in [FAR 25.104](#). The application and approval processes for these exceptions shall be carefully conducted and documented in order to ensure that VA meets its goals of maximizing the use of domestic goods and

materials and fully documenting any exceptions. The determination and approval must be factually supported in writing and included in the contract file.

(2) *Individual Nonavailability*. The determination must be factually supported in writing and included in the contract file. Once a determination has been completed, contracting officers must follow the process of sections [M825.103\(b\)\(4\)](#) and [M825.103\(b\)\(5\)](#) below. The following information is required when proposing the nonavailability of an article:

(i) Identification of agency and contracting activity. Identify the agency, contracting activity, and program (requirements) office.

(ii) Nature and/or description of end item or construction material being acquired. Identify the item(s) being procured, including:

(A) a description of the item(s);

(B) the impact to the mission if the agency is not able to acquire the item(s);

(C) country(ies) of origin and U.S. content (if any), of foreign end item intended for purchase, if known;

(D) if the waiver is to be issued pre-award, whether the supplier of the item(s) intended for purchase is a small or disadvantaged business; and

(E) the estimated value of the procurement (or portion of the procurement) covered.

(F) period that the determination is expected to cover.

(G) if this waiver is of an urgent nature.

(iii) Market research and outreach conducted – describe the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources (e.g., sources are available but cannot offer sufficient quantity; sources are available but cannot offer sufficient quality; no sources can be identified).

(iv) Use of competition – if the waiver is to be issued pre-solicitation, describe whether competition is anticipated; if the waiver is to be issued pre-award, describe whether competition was conducted and, if so, how long the solicitation was open; if domestic sources were identified during market research but did not compete, describe potential reason(s), if known.

(v) Expectation of price preference – identify whether the solicitation will or did include the provision announcing the agency’s intention to provide a price preference for domestic end products and construction material.

(vi) Exclusion of source offering a U.S.-made end product – if a waiver is to be issued pre-award, explain if a U.S.-made end product was offered but would be rejected for reasons other than price.

(vii) Identification of approving authority – nonavailability determinations must be reviewed and approved at a level no lower than the Senior Accountable Official (SAO). The VA Chief Acquisition Officer has been designated as the VA SAO.

(4) *Internal Agency Review Process.* Internal VA procedures require determination approval by the SAO prior to submitting a waiver to the MadeinAmerica.gov website.

(i) Contracting officer is responsible for determining the need for a waiver. Contracting officers are required to use the Nonavailability Waiver template (See [Attachment M825-B – Determination of Nonavailability](#)) and the MIAO “Data Fields” spreadsheet (See [M825.103\(b\)\(5\)](#)).

(ii) After review by the cognizant HCA, determinations and all supporting documentation, to include a completed copy of the MIAO “Data Fields” spreadsheet, must be forwarded for review and approval to the vamiawaivers@va.gov mailbox. Office of Acquisition and Logistics (OAL) Procurement Policy and Systems Oversight/Risk Management and Compliance Service (PPSO/RMCS) will be responsible for monitoring the mailbox.

(iii) PPSO/RMCS will have three business days to review all individual nonavailability determinations.

(iv) Once reviewed by PPSO/RMCS and any potential comments have been resolved by the contracting officer, PPSO/RMCS will forward directly to the VA SAO for review and approval.

(5) *MIAO Waiver Submission Process.* After SAO approves the determination, RMCS will be responsible for submitting a waiver to the MadeinAmerica.gov website in accordance with Made in American Office (MIAO) policy and procedures. The Made in America Office has established a [Made in America Waiver Process](#) MAX page, which contains information and resources on proposed waivers, the waiver review process, and contact information. The “User Guide” and “Data Fields – Nonavailability Waivers” documents in the Resource section contain information for contracting officers and support staff to use prior to submitting a proposed waiver through the digital waiver portal. The User Guide and Data Fields documents will be updated periodically to reflect any changes that have occurred in policy and/or the portal itself.

(i) Description of Market Research in MIAO Waiver. It is important to thoroughly describe the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement in the waiver that is submitted to MIAO. This information must be included in the MIAO 'Data Fields' spreadsheet. Documentation should clearly identify efforts to avoid the need for a nonavailability waiver. Be sure to include detailed information resulting from any Requests for Information (RFIs), Industry Days or other communications with industry, including, but not limited to, dates posted, duration and any responses from potential contractors. Document conclusions reached on the availability of sources (e.g., sources are available but cannot offer sufficient quantity; sources are available but cannot offer sufficient quality; no sources can be identified). (See section 3 of [Attachment M825-B – Determination of Nonavailability](#))

(ii) Contracting officers may not make award until confirmation has been received from the MIAO that the waiver has been reviewed and approved.

M825.104 Nonavailable articles.

(a) The following items are added to the list of nonavailable articles contained in [FAR 25.104](#):

Glass, lead.
Insulin, human.

Subpart M825.2—Buy American Act—Construction Materials

M825.202 Exceptions.

(a) [FAR Subpart 25.2](#) defines specific requirements for construction materials and contains four exceptions. The levels of authority and requisite analysis for each of these exceptions are found at [FAR 25.202](#), Exceptions, and additional guidance is provided below.

(1) *Impracticable or inconsistent with public interest.* When a determination is required under [FAR 25.202\(a\)\(1\)](#), the contracting officer must submit the request for determination to the HCA for submission to the SPE, who will forward the request to the Secretary. The submission must contain all the facts and other pertinent information necessary for the Secretary to make a determination.

(b) For each determination of nonavailability that the HCA makes in accordance with [FAR 25.202\(a\)\(2\)](#), the HCA must do the following:

(1) Factually support the determination in writing and include the determination in the contract file.

(2) Forward a copy of the approved determination, along with supporting

documentation, to the Executive Director, Office of Construction and Facilities Management.

(3) If the HCA believes that the nonavailability of an article is likely to affect future acquisitions, include a recommendation that a copy of the determination and supporting documentation be forwarded to the CAAC for possible addition to the list of nonavailable articles in [FAR 25.104](#). The SPE will decide whether to submit the material to the CAAC.

Subpart M825.4—Trade Agreements

M825.402 General.

(c) *Trade Agreements.* ([FAR subpart 25.4](#)). Trade agreements with 'designated countries' establish specific waivers to the Buy American statute. [FAR 25.003](#) defines a 'designated country' as those included in the World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, certain least developed countries or a Caribbean Basin country. Contracting officers shall confirm the current status prior to each award that contemplates use of the Buy American statutes and ensure that any required documentation for awards based on trade agreements is contained in the contract file.

(d) *Buy American and Trade Agreement Certificates.* The contracting officer is responsible for complying with the Buy American Statute and Trade Agreements. Prior to contract award, contracting officer should ensure the appropriate country of origin certificate is complete. Although contracting officers may rely on the vendor's certification of Buy American Statute and Trade Agreements compliance, the contracting officer should investigate incomplete certificates and any evidence or information that casts doubt on the veracity of the vendor's certification. If the contracting officer does not rely on the vendor's certification, the contracting officer shall ensure the decision is properly documented in the contract file.

(e) Contracting officers can verify products' origins through various sources to include confirming missing or incomplete certifications with the vendor, verifying through various sources on the internet (e.g., vendors website, product search, System for Award Management, etc.), or looking at previous contracts where the same products were purchased.

(f) *Country of Origin test.* The contracting officer is responsible for making their own product qualification decisions and are not bound by the country of origin determination issued by U.S. Customs and Border Protection. Unlike the substantial transformation rule the Trade Agreement imposes on foreign-made products, under the FAR a product need not be wholly manufactured or substantially transformed in the United States to be a 'U.S.-made end product.' Instead, such products may be 'manufactured' in the United States from foreign-made components.

**Subpart M825.6—American Recovery and Reinvestment Act-Buy
American statute-Construction Materials**

M825.603 Exceptions.

(b) Determinations.

(2) For a determination under FAR 25.603(a)(2), the contracting officer shall submit the request, containing all supporting facts and other pertinent information to the SPE, who will upon approval, forward the request to the Secretary for approval, unless approval is further delegated to the SPE.

Subpart M825.10—Additional Foreign Acquisition Regulations

M825.1001 Waiver of right to examination of records.

(a) *Policy.* Contracting officers, whenever possible, will insert the appropriate basic clauses in negotiated contracts with foreign contractors. The clause at [FAR 52.215-2](#), Audit and Records—Negotiation, prescribed at [FAR 15.209\(b\)](#), and paragraph (d) of the clause at [FAR 52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, prescribed at [FAR 12.301\(b\)\(4\)](#), implement 10 U.S.C. 2313 and 41 U.S.C. 254d. The basic clauses authorize examination of records by the Comptroller General. If the basic clauses are not included, which authorize examinations of records by the Comptroller General, then the contracting officer may use [FAR 52.215-2](#) with its Alternate III or [FAR 52.212-5](#) with its Alternate I; only after meeting the conditions at [FAR 25.1001\(a\)\(2\)](#). The contracting officer must also prepare a determination and finding, as outlined at [FAR 25.1001\(b\)](#).

(b) *Determinations and findings.* The contracting officer must submit the determination and finding to the HCA for submission to the SPE, who will forward the request to the Secretary for approval, as provided in [FAR 25.1001\(a\)\(2\)\(iii\)](#). The submission must include all appropriate documentation in accordance with [FAR 25.1001\(b\)](#).

(1) The Secretary, upon concurring with the contracting officer proposed determination and finding, will forward the document to the Comptroller General for concurrence. However, the execution of the determination and findings by the Secretary does not require concurrence of the Comptroller General if the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination.

(2) The completed determination and finding will be made part of the contract file.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M828—BONDS AND INSURANCE

Subpart M828.1—Bonds and Other Financial Protections

M828.100	Scope of subpart.
M828.101	Bid guarantees.
M828.101-70	Safekeeping and return of bid guarantee.
M828.106	Administration.
M828.106-6	Furnishing information.
M828.106-71	Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.
M828.106-73	Performance and payment bonds for multiple award contracts.

Subpart M828.2—Sureties and Other Security for Bonds

M828.202	Acceptability of corporate sureties.
M828.203	Acceptability of individual sureties.
M828.203-7	Exclusion of individual sureties.
M828.204	Alternatives in lieu of corporate or individual sureties.
M828.204-2	Certified or cashier's checks, bank drafts, money orders, or currency.
M828.270	General procedures and processes related to handling bonds.

Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

M828.7004	Approval for indemnification.
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ATTACHMENT:

[M828-A](#), Contract Bonds Checklist

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Subpart M828.1—Bonds and Other Financial Protections

M828.100 Scope of subpart.

This subpart prescribes guidance and procedures for the safekeeping of negotiable securities, furnishing information to contractors, and assisting Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Concerns in obtaining bonding.

M828.101 Bid guarantees.

M828.101-70 Safekeeping and return of bid guarantee.

(a) The contracting officer shall retain certified checks or other negotiable securities provided as bid security acceptable bids in a safe or a similarly secured location. After the contract and contract bonds have been signed and approved, the contracting officer shall return the certified checks or other negotiable securities to all bidders either:

(1) In person to the bidder who provides a proper receipt; or

(2) By any method that shall provide evidence that the bidder received the security.

(b) If any of the acceptable bidders request the return of a corporate or individual surety bid bond, the contracting officer shall not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

M828.106 Administration.

M828.106-6 Furnishing information.

The contracting officer for the applicable contract shall furnish a certified copy of the payment bonds to the requestor and determine the preparation costs that the requestor must pay in accordance with [FAR 28.106-6\(d\)\(3\)](#).

M828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

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

M828.106-73 Performance and payment bonds for multiple award contracts.

Performance and payment bonds for multiple award contracts are only required at the time of issuance of a task/delivery order and shall not be required for the maximum value of the contract. The bonds will be based on the amount of the task order and any subsequent modifications.

Subpart M828.2—Sureties and Other Security for Bonds

M828.202 Acceptability of corporate sureties.

The contracting officer shall ensure that corporate sureties offered for a bond in connection with the procurement of supplies or services (including construction) appear on the list of approved corporate sureties contained in the Treasury Department Circular 570, and that the amount of bond is not in excess of the underwriting limits stated in that list. The current list of Treasury authorized companies is available through the Internet at [Department of the Treasury's Listing of Companies Holding Certificates of Authority](#). The contracting officer will further ensure that the surety remains on the Treasury Department circular approved list through the active life of the contract by reviewing all circular supplements. Interim changes are published in the Federal Register and on the internet as they occur. When an active surety is terminated and removed from the list, the contracting officer shall ensure that new bonding is secured by the contractor for the uncompleted work under the contract at no cost to the Government. For further procedures on handling bonds refer to M828.270 below.

M828.203 Acceptability of individual sureties.

M828.203-7 Exclusion of individual sureties.

(a) The authority to make determinations to exclude individuals from acting as surety on bonds referenced in [FAR 28.203-7\(a\)](#) is delegated to the DSPE.

(b) The authority to authorize acceptance of bonds of individual sureties whose names appear in the System for Award Management Exclusions pursuant to [FAR 28.203-7\(d\)](#) is delegated to the DSPE.

M828.204 Alternatives in lieu of corporate or individual sureties.

M828.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.

The contracting officer receiving a certified or cashier's check, bank draft, post office money order or currency in lieu of corporate or individual sureties will deposit them in accordance with [FAR 28.204-1\(a\) or \(b\)](#).

M828.270 General procedures and processes related to handling bonds.

(a) Bonds protect the Government, the prime contractor's employees, and the subcontractors and suppliers who provide goods or services to the prime contractor.

(1) The bid bond, [Standard Form \(SF\) 24](#) (on solicitations with cost estimates exceeding \$150,000), ensures that if awarded a contract, the bidder will furnish acceptable payment and performance bonds.

(2) The performance bond ([SF25](#)) protects the Government from loss in the event the contractor fails to complete the contract or fails to pay its taxes.

(3) The payment bond ([SF 25A](#)) protects the prime contractor's employees in the event the contractor fails to pay salaries and the subcontractors and suppliers in the event the contractor fails to pay its bills.

(4) Subcontractors, suppliers, and the prime contractor's employees are precluded from filing liens against Federal Government property.

(b) The contracting officer is responsible for ensuring the bond documents they accept and approve are valid.

(c) To be acceptable, the corporate surety bond must contain the name of a corporation in the "SURETY(IES)" block of the form and the named corporation must be listed in the Department of the Treasury's Listing of Approved Sureties ([Department of Treasury's Listing of Approved Sureties](#)).

(1) If the named surety (other than an individual named person) is not listed in Department of the Treasury Circular 570, the bond must be rejected in accordance with [FAR 28.202](#). This does not apply if an individual is shown on the bond as the surety in the "SURETY(IES)" block.

(2) If that block contains anything other than the name of a Department of the Treasury Circular 570-listed corporate surety or an individual person's name, the bond should be rejected.

(d) The contracting officer must check and verify that the "PENAL SUM OF BOND" amount shown on the bond complies with the requirements of [FAR 28.101-2\(b\)](#) or [FAR 28.102-2](#).

(e) If the amount on a bid bond is not sufficient, the contracting officer must comply with and follow the guidance at [FAR 28.101-4](#).

(f) The correct "INVITATION NO." or "CONTRACT NO." must be shown in the applicable block on the bond.

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(1) An incorrect invitation number on a bid bond make the bid bond invalid and the bid should be rejected.

(2) The contracting officer must reject payment or performance bonds that have an incorrect contract number and return the bonds to the contractor for correction.

(g) The name “PRINCIPAL” on the bond (the bidder or contractor) must be the same name as the named bidder or contractor as shown on the [SF 1442](#) and the type of organization shown on the bond must match the type of organization shown in the solicitation offer representations and certifications or on-line at [System for Award Management \(SAM\) Registration and Representations and Certifications database](#).

(h) The bond forms may not be modified from the standard form formats (see [FAR 28.106-1](#)), except as provided in [FAR 28.204\(a\)](#). Only standard, non-modified United States Government forms should be accepted. Bond forms from other organizations such as the American Institute of Architects (AIA) may not be accepted.

(1) In addition, an addendum adding a rider on terrorism coverage is acceptable.

(2) Any addendum or rider other than a terrorism rider must be approved by the Office of the General Counsel (OGC).

(i) Bonds must be original documents, contain original signatures, must not contain any “white-out” corrections, and must be signed by both *an authorized representative of the Principal* (the bidder or contractor) and by *an individual who has been delegated by the surety corporation with the power and authority to sign bonds on behalf of the corporation* (the “attorney-in-fact”).

(1) Under certain circumstances the lack of signature of the Principal may be waived as a minor informality and the defect may be corrected after receipt of the bond, but the lack of signature of the attorney-in-fact on a corporate surety bond may not be waived and renders the bond unacceptable.

(i) A corporate seal of the surety is not sufficient evidence that the attorney-in-fact is authorized to sign the bond. They must also be accompanied by a valid power of attorney from the surety corporation granting the attorney-in-fact authority to sign.

(j) The “STATE OF INC.” and the “LIABILITY LIMIT” blocks should be filled in, but failure of the bond to reflect the surety’s liability limit in the “LIABILITY LIMIT” block may be waived as a minor informality.

(1) A liability limit stated in the “LIABILITY LIMIT” block that is less than the

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amount required by [FAR 28.101-2\(b\)](#) or [FAR 28.102-2](#) shall render the bond unacceptable. If there is a liability limit set against the bond the contracting officer shall consult with OGC.

(2) The liability limit figure shown for the surety corporation in Department of the Treasury Circular 570 represents the dollar value of each surety bond that the corporation is authorized to issue. If the liability limit is listed as \$3,000,000 the corporation is authorized to issue bonds valued at up to \$3,000,000 for each bond.

(3) Bonds that exceed the liability limit value should be rejected unless the penal sum (face amount) of bonds which surety companies may provide is protected by co-insurance, reinsurance, or other methods in accordance with Department of the Treasury Circular 31 CFR [Section 223.10](#), [Section 223.11](#).

(k) Surety corporations can only sell bonds in States in which they are licensed to do so.

(1) The power of attorney usually states where the attorney-in-fact is located or the address of the attorney-in-fact may be shown in the "NAME AND ADDRESS" block under "CORPORATE SURETY(IES)" at the bottom of the bond.

(2) The contracting officer must match the State where the attorney-in-fact is located with the list of States shown for that particular surety corporation in Department of the Treasury Circular 570.

(3) The States listed in the Circular are the States in which the surety is licensed to sell bonds, but the list may not be current

(4) If the attorney-in-fact is located in a State that is not shown in Department of the Treasury Circular 570 for that surety, the contracting officer should verify with the surety corporation (not with the attorney-in-fact) whether or not the surety corporation is licensed to issue surety bonds in the State in which the attorney-in-fact is located.

(5) The contracting officer can also verify with the State insurance commissioner (information of such offices can usually be located on the Web or can be found at the end of Department of Treasury Circular 570 that the surety corporation is licensed to conduct surety business in that State.

(6) If the surety corporation is not licensed to issue bonds in the State in which the attorney-in-fact is located, the bonds shall be rejected.

(7) The location of the construction project or the location of the bidder/contractor has no impact on the States in which the surety is licensed; the State relates only to the location of the attorney-in-fact who signed the bonds (see Notes (c) and (f) in Circular 570).

(l) A valid power of attorney is critical to the validity of the corporate surety bond.

(1) The contracting officer must read the power of attorney and assess its validity. A sample power of attorney can be found on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) website. ([Sample power of attorney](#))

(2) If the document says that it is only valid if it contains a corporate water mark or a particular color, it must contain the required water mark or color. If it doesn't the bond should be rejected.

(3) The power of attorney must state that the person who signed the bond is authorized to do so and the name on the power of attorney must match the name shown on the bond.

(4) If the power of attorney places any limits on the dollar value or on the type of bonds that the named attorney-in-fact can execute, the bonds signed by that attorney-in-fact must be within those limits.

(5) If the power of attorney contains any signatures that are printed copies of signature rather than original signature, the document must contain a statement that printed copies of signatures is authorized.

(6) The document must contain a statement with a current date attesting that the power of attorney is still valid. If there is any question as to the validity of the power of attorney, the validity of the bond should be verified with the corporate surety office.

(7) The contracting officer should consult with OGC for guidance in determining the adequacy and acceptability of powers of attorney.

(8) If a contracting officer has any concerns as to the validity of a corporate surety they should go to the [Department of Treasury Circular 570 website](#).

(9) For corporate sureties that do not participate in the Bond Authenticity program, the contracting officer should contact such sureties via the telephone number listed in Circular 570 to verify that the bonds are valid.

(m) For contracts between \$35,000 and \$150,000, a bid bond is not required, but the contractor must be required to provide payment protection after contract award. The solicitation should authorize the contractor to select from at least two of the types of payment protection authorized by [FAR 28.102-1\(b\)](#).

(1) More than two options can be provided to the bidder/contractors, but it is preferable that bidder/contractors be given at least the option of providing either a

payment bond or an irrevocable letter of credit (ILC).

(2) If the contractor elects to furnish anything other than corporate surety bonds, i.e., individual surety bonds or alternative payment protections the contracting officer shall consult with the OGC to determine the validity and acceptability of the payment protection provided.

(n) For contracts estimated to exceed \$150,000 a bidder or contractor may furnish alternatives in lieu of corporate or individual surety in support of a bond (see [FAR 28.204](#)).

(1) In such instances, the bidder or contractor must submit a completed bond form or forms containing a statement pledging security as provided in [FAR 28.204-1](#) through [FAR 28.204-3](#) in lieu of execution of the bond form by a corporate or individual surety.

(2) If an ILC is offered as an alternative security, the contracting officer must consult with the OGC for guidance in determining the adequacy and acceptability of the ILC. Note that the ILC must comply with the requirements of [FAR 28.204-4](#).

(o) If a bidder or contractor provides an individual surety bond, the contracting officer shall obtain the opinion of the OGC as to the adequacy of the documents pledging the assets of the individual surety prior to accepting the bond ([FAR 28.203\(f\)](#)).

(1) The types of assets of an individual surety that are acceptable are listed in [FAR 28.203-2\(a\)](#) and [28.203-2\(b\)](#) and the contracting officer must ensure that only those types of assets are accepted.

(p) While it is not mandatory for the contacting officer to require bid bonds from a bidder on 8(a) sole source negotiated construction contracts valued in excess of \$150,000, it is recommended that bid bonds be required in such circumstances.

(1) This requirement will help avoid the necessity of terminating an awarded contract if the contractor is unable to provide acceptable payment and performance bonds.

(2) If the bidder can provide an acceptable bid bond and is subsequently awarded a contract, VA will include the cost of the bid bond in the negotiated award price.

(3) A contractor should not be placed into a situation where the contractor is subject to termination of the contract for failure to provide acceptable payment and performance bonds if that situation could have been avoided through the rejection of a defective bid bond.

Subpart M828.70—Indemnification of Contractors for Medical Research or Development Contracts

M828.7004 Approval for indemnification.

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

(b) The contracting officer must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. ([38 U.S.C. 7317](#))

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M829—TAXES

Subpart M829.1—General

Sec.	
M829.101	Resolving tax problems.
M829.101-70	Procedures for legal review of tax issues.

Subpart M829.2—Federal Excise Taxes

M829.201	General.
M829.203	Other Federal tax exemptions.
M829.203-70	Tax exemptions for alcohol products.

Subpart M829.3—State and Local Taxes

M829.302	Application of State and local taxes to the Government.
M829.303	Application of State and local taxes to Government contractors and subcontractors.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M829—TAXES

Subpart M829.1—General

M829.101 Resolving tax problems.

(a) In order to ensure uniformity in VA's treatment of the tax aspects of contracting and ensure effective cooperation with other government agencies on tax matters, the VA Office of General Counsel has the responsibility within VA for handling tax related matters and issues. Therefore, the contracting officer or any other member of the requiring or contracting activity shall not engage in negotiation with any taxing authority for the purpose of determining the validity of any tax.

M829.101-70 Procedures for legal review of tax issues.

(a) When a problem exists which requires referral to legal tax counsel in accordance with [FAR 29.101](#) and M829.101, the contracting officer shall request in writing the assistance of legal counsel by—

- (1) Detailing the problem;
- (2) Attaching appropriate back-up data; and
- (3) Providing copies of the contract, order and modifications.

(b) VA Office of General Counsel (OGC) shall report to the contracting officer as to the necessary disposition of the tax issue.

(c) The contracting officer shall notify the contractor of the outcome of the tax issue.

(d) VA OGC is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes. Any notifications received by the contracting officer shall be promptly referred and provided to OGC.

Subpart M829.2—Federal Excise Taxes

M829.201 General.

(a) See M829.101-70 for VA procedures for legal review of tax issues.

M829.203 Other Federal tax exemptions.

M829.203-70 Tax exemptions for alcohol products.

(a) *General.*

(1) VA is permitted to procure spirits to be used for non-beverage purposes free of tax under Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations. Refer to the Code of Federal Regulations, [Title 27](#) for the limitations and requirements with particular attention to:

(i) [§19.426 Withdrawal of spirits by the United States.](#)

(ii) [§20.241](#) through [§20.246](#) under Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency.

(iii) [§22.171](#) through § 22.176 under Subpart N—Use of Tax-Free Spirits by the United States or Government Agency.

(iv) [§24.293 Wine for Government use.](#)

(v) [§27.181](#) through [§27.184](#) under [Subpart M](#)—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax for Use of the United States.

(b) *Specially denatured spirits or spirits free of tax for nonbeverage purposes.*

(1) The contracting officer may obtain application forms for tax-free purchases by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the TTB National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, Ohio 45202. You can find all TTB forms on TTB's website, www.ttb.gov. Click the "Forms" link under the "Information By Topic" section. The completed forms must be submitted to the TTB officer as provided in the most recent version of the form.

(2) The Executive Director and Chief Operating Officer, National Acquisition Center, and the Head of the Contracting Activity (HCA) may sign application permits on Department of the Treasury-[TTB Form 5150.33](#), Spirits for Use of The United States. This authority may not be delegated.

(3) The accountable officer must ensure that accurate records of all receipts, usage, and destruction of tax-free distilled spirits are maintained at each medical center and must conduct a semi-annual physical inventory of the tax-free alcohol in the possession of the medical center (see 27 CFR 22.161 and 22.162).

Subpart M829.3—State and Local Taxes

M829.302 Application of State and local taxes to the Government.

(a) If a vendor refuses to sell at a price exclusive of the State and local tax, the contracting officer must use Standard Form (SF) 1094, U.S. Tax Exemption Certificate, as a basis for notifying taxing authorities for a refund of taxes paid.

(b) A contracting officer may not furnish an SF 1094 to a vendor or use SF 1094 to claim reimbursement from the taxing authority when the total amount of State and local tax on any one purchase is \$15 or less.

M829.303 Application of State and local taxes to Government contractors and subcontractors.

(c) The contracting officer shall seek review and advice in accordance with M829.101-70, Procedures for legal review of tax issues.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M832—CONTRACT FINANCING

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M832.001	Definitions.
M832.006	Reduction or suspension of contract payments upon finding of fraud.
M832.006-1	General.
M832.006-3	Responsibilities.
M832.006-4	Procedures.
M832.009	Providing accelerated payments to small business subcontractors
M832.009-1	General

Subpart M832.1—Non-Commercial Item Purchase Financing

M832.102	Description of contract financing methods.
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Subpart M832.2—Commercial Item Purchase Financing

M832.201	Statutory authority
M832.202	General.
M832.202-1	Policy.
M832.202-4	Security for government financing

Subpart M832.4—Advance Payments for Non-Commercial Items

M832.402	General.
M832.409-1	Recommendation for approval.
M832.409-2	Recommendation for disapproval.

Subpart M832.5—Progress Payments Based on Costs

M832.502	Preaward matters.
M832.502-2	Contract finance office clearance.
M832.503-6	Suspension or reduction of payments

Subpart M832.6—Contract Debts

M832.607	Installment payments and deferment of collection.
M832.607-2	Deferment of Collection.

Subpart M832.7—Contract Funding

M832.703 Contract funding requirements.
M832.703-1 General.

Subpart M832.8—Assignment of Claims

M832.805 Procedure.
M832.805-70 Distribution/notification of assignment of claims.

Subpart M832.9—Prompt Payment

M832.904 Determining payment due dates.

Subpart M832.11—Electronic Funds Transfer

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M832.7001-1 Data Transmission

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M832—CONTRACT FINANCING

M832.001 Definitions.

As used in this part—

Incremental funding means a method of funding contracts that provides specific spending limits that are less than the total estimated cost/price of the entire contract, with the understanding that additional funds are expected to be provided at a later date. Incremental funding typically is used because funds are not available to obligate the total cost of an entire contract that will cover multiple years or other periods or increments of performance. After obligation of the initial increment at contract award, normally for the first year, funds are subsequently obligated in periodic installments as work progresses, consistent with the terms of the contract.

Non-severable services means services that cannot feasibly be separated into components, but will be performed as a single task to meet the needs of the agency.

Severable services means services that are characterized as continuing and recurring in nature, e.g., lawn maintenance, janitorial services, security services, etc., and can be separated into components that independently provide value to meet the needs of the agency.

M832.006 Reduction or suspension of contract payments upon finding of fraud.

M832.006-1 General.

(b) The Senior Procurement Executive (SPE) is authorized to make determinations that there is substantial evidence that contractors' requests for advance, partial, or progress payments are based on fraud and may direct that further payments to the contractors be reduced or suspended, as provided in [FAR 32.006-1](#). This authority may not be redelegated.

M832.006-3 Responsibilities.

(a) The Remedy Coordination Official (RCO) for VA is the Deputy Senior Procurement Executive (DSPE).

(b) VA personnel shall report suspected fraud related to advance, partial, or progress payments to the contracting officer. The contracting officer will forward the report, with recommendations through the HCA to the RCO and VA Office of the Inspector General (OIG). The report must include all available information supporting the suspicion, including, but not limited to:

- (1) The particular VA contract involved;
- (2) The identity of the person suspected of the fraud;
- (3) The incident, document, invoice, or other evidence supporting the allegation of fraud;
- (4) The amount of the fraudulent claim;
- (5) The date(s) when the fraudulent claim was made;
- (6) Copies of relevant documents that support the allegation;
- (7) Whether anyone else has already reviewed the allegation; and
- (8) An address and telephone number of complainant and whether the complainant wishes confidentiality.

The person that initially made the report may be required to provide additional information as requested by the CO, HCA, RCO, and the OIG.

M832.006-4 Procedures.

(e) The RCO shall carry out the responsibilities of the agency head in [FAR 32.006-4\(e\)](#) to notify the contractor of proposed action under [FAR 32.006](#). The notice of proposed action will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the notice of proposed action may be sent to any partner, principal, officer, director, owner or co-owner, or joint venture. The contractor will be afforded an opportunity to appear before the RCO to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceedings will be conducted in an informal manner and without the requirement for a transcript. If the RCO does not receive a reply from the contractor within 30 calendar days, the RCO will base the recommendations to the SPE on the information available. Any recommendation of the RCO under this section must address the results of this notification and the information, if any, provided by the contractor.

(g) In addition to following the procedures in [FAR 32.006-4](#), the SPE shall provide a copy of each final determination and the supporting documentation to the contractor, the RCO, the contracting officer, and the OIG. The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

M832.009 Providing accelerated payments to small business subcontractors.

M832.009-1 General.

Agencies are encouraged to provide accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

Subpart M832.1—Non-Commercial Item Purchase Financing

M832.102 Description of contract financing methods.

(e)(2) The head of the contracting activity (HCA) shall establish procedures for making progress payments based on a percentage or stage of completion. The procedures shall ensure that payment is not made unless the contractor provides sufficient information about work completed and that the work meets the quality standards of the contract.

Subpart M832.2—Commercial Item Purchase Financing

M832.201 Statutory authority.

The contracting officer is delegated the authority under [FAR 32.201](#) to make the determination that terms and conditions for payment for commercial items are appropriate and customary in the commercial marketplace and are in the best interest of the United States.

M832.202 General.

M832.202-1 Policy.

(b) Before using commercial interim payment or commercial advance payment terms in solicitations or contracts exceeding the simplified acquisition threshold (as defined in [FAR 2.101](#)), the contracting officer shall request the approval of the head of the contracting activity (HCA). The approval of the HCA shall be based on the requirements of [FAR 32.202-1\(b\) and \(d\)](#). The contracting officer must fully support the request with the reasons why the proposed commercial interim payments or commercial advance payments are in the best interest of the Government. The approval may be in the format of a D&F with the signatures of contracting office and the approving official.

M832.202-4 Security for government financing

(a)(2) The Office of Acquisition Operations (OAO) has awarded a contract to Dun & Bradstreet (D&B) for VA COs to have unlimited access to multiple reports on contractor businesses as a source for information to help determine contractor responsibility. Utilizing these types of business reports will enhance the ability of COs to assess the financial and operational stability of prospective contractors. In the absence of, or in

addition to, the D&B report information, COs should utilize the type of information as described in [FAR 9.104-1](#), General standards.

Subpart M832.4—Advance Payments for Non-Commercial Items

M832.402 General.

Authority to make the determination described at [FAR 32.402\(c\)\(1\)\(iii\)](#) and to approve contract terms concerning advance payments, as provided by [FAR 32.402\(e\)\(1\)](#), is delegated to the head of the contracting activity (HCA).

M832.409-1 Recommendation for approval.

Before award, contracting officers shall submit a request for approval to use advance payment to the Head of the Contracting Activity (HCA). The request must include the information required by [FAR 32.409-1](#) and must address the standards for advance payment in [FAR 32.402\(c\)\(1\)\(iii\)](#). (See an example of the determination in [FAR 32.410](#).)

M832.409-2 Recommendation for disapproval.

If recommending disapproval, the contracting officer shall submit the information required by [FAR 32.409-2](#) to the HCA.

Subpart M832.5—Progress Payments Based on Costs

M832.502 Preaward matters.

M832.502-2 Contract finance office clearance.

Contracting officers shall request approval from the head of the contracting activity (HCA) before taking the actions listed in [FAR 32.502-2](#). The rationale and recommendations of the contracting officer must accompany requests for approval.

M832.503-6 Suspension or reduction of payments.

(a)(2) The contracting officer may suspend or reduce progress payments if the contractor is delinquent in delivery of supplies or performance of services in accordance with the due dates specified in the contract. Payment may resume when the delinquency is cured or when the contracting officer is satisfied that sufficient progress has been made and future deliveries or performance will be timely.

Subpart M832.6—Contract Debts

M832.607 Installment payments and deferment of collection.

M832.607-2 Deferment of collection.

(c)(2) The contracting officer shall forward the information required by [FAR 32.607-2\(c\)\(2\)](#) to the VA Financial Services Center.

(d) The Financial Services Center may authorize a deferment pending the resolution of appeal to avoid possible over-collections.

Subpart M832.7—Contract Funding

M832.703 Contract funding requirements.

M832.703-1 General.

(b) Use of incremental funding is limited as follows:

(1) The Federal Acquisition Streamlining Act (FASA) of 1994 provides the legal authority for contracting officers to enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year provided the contract performance period does not exceed one year.

(2) Without statutory authority, incremental funding may not be used for—

(i) firm-fixed price contracts; or

(ii) multi-year contracts that cannot be separated for performance by fiscal year.

The Department of Veterans Affairs does not have this authority.

(3) A contract for non-severable services cannot be incrementally funded. Examples are consulting studies, software development efforts, construction services, or architect-engineer services.

Subpart M832.8—Assignment of Claims

M832.805 Procedure.

(d) As a best practice, after acknowledgment of receipt, the contracting officer should consider issuing a modification to the contract to reflect the assignment of claims and the changed payment information.

M832.805-70 Distribution/notification of assignment of claims.

(a) Prior to acknowledgement of receipt of an assignment of claims, and in addition to the requirements of [FAR 32.805\(d\)](#), the contracting officer shall submit the notice of assignment to the Office of General Counsel (OGC) for review and approval. Upon

conclusion of OGC's review and acknowledgement of receipt, the contracting officer shall:

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

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

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

Subpart M832.9—Prompt Payment

M832.904 Determining payment due dates.

(a) *General.*

(1) When preparing specification packages, contracting officers must give full consideration to the time reasonably required for constructive acceptance or approval of the goods or services and for making invoice payments. Contracting officers should consider the following before taking the actions in this section:

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

(2) After consideration of the factors in paragraph (a)(1), the contracting officer may specify a longer period in the solicitation and resulting contract—

(i) for constructive acceptance of goods or services specified in [FAR 32.904\(b\)](#);

(ii) for constructive acceptance of Architect-Engineer services in [FAR 32.904\(c\)](#); and

(iii) to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under construction contracts as specified in [FAR 32.904\(d\)](#).

These revisions shall be included in solicitations before issuance. The contracting officer and the payment office must indicate agreement in writing (by memo or e-mail) to

the negotiated payment terms before awarding the contract.

Subpart M832.11—Electronic Funds Transfer

M832.1106 EFT mechanisms.

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

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

Subpart M832.70—Electronic Invoicing Requirements

M832.7001-1 Data transmission.

(a) The contracting officer shall provide in the contract the current website address for VA's Electronic Invoice Presentment and Payment System located at <http://www.fsc.va.gov/einvoice.asp>.

(b) The contracting officer may upon request provide the current X12 EDI website address (<http://www.x12.org>) for additional information on EDI 810 and 811 formats.

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M833—PROTESTS, DISPUTES, AND APPEALS

Subpart M833.1—Protests

M833.103-70	Protests to VA.
M833.103-71	Stay of Protests to VA.
M833.104-70	Protests to GAO.
M833.104-71	Statutory Stay of Protests to GAO.
M833.105	Protests at the U.S. Court of Federal Claims.

Subpart M833.2—Disputes and Appeals

M833.209	Suspected fraudulent claims.
M833.211-70	Contracting officer's final decision.
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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART M833—PROTESTS, DISPUTES, AND APPEALS

Subpart M833.1—Protests

M833.103-70 Protests to VA.

(a) Protests to VA are agency protests filed with the:

- (1) Contracting officer,
- (2) Executive Director, Office of Acquisition and Logistics (ED/OAL) as an:
 - (i) initial protest to the ED/OAL, or
 - (ii) appeal of the contracting officer protest decision.

(b) The ED/OAL is the Senior Procurement Executive (SPE).

(c) *Contracting officer's Responsibilities.* Upon receipt of a protest, the contracting officer is required to:

(1) Follow the requirements in [FAR 33.102\(a\)](#), [33.103\(f\)](#) and ensure compliance with VAAR 833.103-70.

(2) Provide their supervisors and their designated VA attorney a copy of the protest immediately upon receipt.

(3) Notify the Office of Risk Management and Compliance Service (RMCS) immediately of any protest filed with the contracting officer by forwarding a copy of the protest letter via the email address at EDProtests@va.gov. Contracting officers have the option of requesting a review of their draft decision by RMCS. In the email notification, contracting officers must state if they will or will not be forwarding a copy of their draft decision to RMCS for review.

(4) Prepare a draft decision letter that is well-reasoned and explains the agency position as required by [FAR 33.103\(h\)](#).

(5) Submit draft decision letter and relevant documents to the assigned RMCS Procurement Analyst prior to obtaining legal review and concurrence, if an RMCS review was requested.

(6) Submit draft decision letter and relevant documents to the designated VA attorney for review and concurrence, if an RMCS review was not requested.

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(7) Include the following appeal language (usually as the last paragraph) in all protest decision letters:

“Should you disagree with this decision, you may file an appeal with the 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 electronically at EDProtests@va.gov. Any such appeal must be received within 10 calendar days after receipt of this letter. In the alternative, you may file a protest with the Government Accountability Office (GAO). Protests filed with the GAO must be filed through GAO’s Electronic Protest Docketing System (EPDS) at <https://epds.gao.gov>. Any GAO protest must be filed within 10 calendar days of this formal notification of, or actual or constructive knowledge of, an initial adverse agency action (as determined in 4 Code of Federal Regulations 21.0(e)). If you file an appeal with the Executive Director, Office of Acquisition and Logistics, you may waive your right to further protest to the Comptroller General at a later date.”

(8) Put forth best efforts to resolve protests within 35 calendar days after the protest filing pursuant to [FAR 33.103\(g\)](#). If additional time is required, inform the protester as to when a final decision is anticipated to be made.

(9) Provide the decision letter to the protester using a method that provides evidence of receipt pursuant to [FAR 33.103\(h\)](#).

(10) Provide a copy of the signed decision letter to RMCS via the email address at, or to the assigned RMCS Procurement Analyst, if an RMCS review was received.

(11) Provide a copy of the signed decision letter to the VA attorney who concurred in the draft decision letter.

(12) Provide information as requested by RMCS analysts when protesters appeal the contracting officer’s decision with the ED/OAL.

(d) *RMCS’s Responsibilities.* RMCS manages VA protests and appeals of contracting officer’s protest decisions on behalf of the ED/OAL. The RMCS staff will:

(1) Maintain a log of all protests submitted by contracting officers and all initial protests and appeals filed with the ED/OAL.

(2) Acknowledge receipt of protests received from contracting officers. If the contracting officer requests RMCS review of their draft decision letter, an RMCS Procurement Analyst will be assigned and collaborate with the contracting officer.

(3) Review contracting officers’ draft decision letters, when requested. The RMCS Procurement Analyst will recommend changes, as appropriate, to ensure the decisions are well-reasoned, protest issues are fully addressed, and VA’s position is adequately explained.

(4) Notify and obtain relevant information from contracting officers upon receipt of

initial protests and appeals of contracting officers' decisions filed with the ED/OAL.

(5) Prepare decision letters in response to initial protests and appeals filed with the ED/OAL that are well reasoned and explain the agency position pursuant to [FAR 33.103\(h\)](#).

(6) Include the following language in decision letters, as appropriate, when initial protests are filed with the ED/OAL;

“Should you disagree with this decision, you may file a protest GAO. Protests filed with the GAO must be filed through GAO’s Electronic Protest Docketing System (EPDS) at <https://epds.gao.gov>, within 10 calendar days after receipt of this letter, or actual or constructive knowledge of, an initial adverse agency action (as determined in 4 Code of Federal Regulations 21.0[e]).”

(7) Obtain legal concurrence in draft decisions to initial protests and appeals filed with the ED/OAL.

(8) Put forth best efforts to ensure initial protests and appeals filed with the ED/OAL are resolved within 35 calendar days after the protest filing pursuant to [FAR 33.103\(g\)](#). If additional time is required, inform the protester as to when a final decision is anticipated to be made.

M833.103-71 Stay of protests to VA.

(a) *Stay of contract award or contract performance.* The contracting officer must stay contract award or contract performance if the protest was filed in a timely manner to trigger the stay, as provided in [FAR 33.103\(f\)\(1\)](#) or [FAR 33.103\(f\)\(3\)](#), respectively. The stay must remain in place until the protest is resolved or the approving official, as provided in paragraph (d) of this section, has determined that a contract must be awarded or contract performance must begin/continue.

(b) *Override of stay.* When it is determined that a contract must be awarded or contract performance must begin/continue, the contracting officer must assemble a protest override package as provided in paragraph (c) of this section. The contracting officer must submit the package to its designated VA attorney for legal review/opinion to ensure that the documents are accurate, complete, and legally sufficient. After receipt of legal review/opinion, the contracting officer must submit the package to the approving official identified in paragraph (d) of this section for approval. If the approving official is the ED/OAL, the contracting officer must submit the package to the ED/OAL via the email address at EDProtests@va.gov.

(c) *Protest override package.* The protest override package must include the following documents:

(1) Contracting Officer Statement. The statement should include a brief history of the procurement, protest allegations, analysis of each allegation and basis/es for prevailing, and a brief conclusion.

(2) *Mission Impact Statement.* The statement should be prepared by a subject matter expert of the supplies or services being procured and include the adverse consequences that will result if an override is not obtained.

(3) *Determination and Findings (D&F).* The findings should provide the statutory or regulatory basis for the override (i.e., urgent and compelling reasons or best interest of the Government), address any significant adverse consequences, address any reasonable alternatives to the override, cost associated with proceeding with the override, and impact of the override on competition and integrity of the procurement system. The D&F must be signed by the approving official in paragraph (d).

(4) *Justification and Approval for Sole Source, if applicable*

(5) *VA attorney legal review/opinion*

(d) *Approving Official.* The approving official for the stay of protest D&F in (c)(3) above is the HCA or the ED/OAL if the HCA is the contracting officer. See [FAR 33.103\(f\)\(1\) \(protests before award\) and/or FAR 33.103\(f\)\(3\) \(protests received within 10 days after contract award or within 5 days after a debriefing\)](#).

M833.104-70 Protests to GAO.

(a) *General.*

(1) *GAO protests rules and procedures.* The GAO issues a descriptive guide, protest timeline and other material that provides useful information to the GAO protests process. These resources are available at: <http://www.gao.gov/legal/bid-protests/>.

(2) *Responses/Notifications to GAO.* The assigned VA attorney is responsible for preparing and submitting responses to GAO on protests filed with GAO against VA procurements. In addition, the VA attorney is responsible for notifying GAO of any findings to override stays as required by [FAR 33.104\(b\)\(2\) and FAR 33.104\(c\)\(3\)](#).

(b) *Coordination of GAO Protests.* RMCS coordinates matters regarding protests filed with the GAO. RMCS analysts will:

(1) Record/log each notice of protest received from GAO.

(2) Submit GAO protest notifications to appropriate contracting officers and their respective VA attorney. If RMCS analysts receive additional documents from GAO and other parties to the protest, such documents will be forwarded to contracting officers and VA attorney, as appropriate.

(c) *Contracting officers' responsibilities.* A contracting officer involved in a GAO protest must:

(1) Inform their supervisor immediately upon receipt of a GAO protest

notification.

(2) Follow the notification procedures in [FAR 33.104\(a\)\(2\)](#), as appropriate.

(3) Discuss the protest with the VA attorney assigned the protest case immediately upon receipt of the protest to determine whether the issues raised warrant submission of a protest file. If a protest file is required, the contracting officer must submit the file to the VA attorney within 5 working days of receipt of the GAO protest notification from RMCS analysts or by the due date established by the VA attorney. The file must include an index, and, as appropriate, the documents listed in [FAR 33.104\(a\)\(3\)\(ii\)](#). In some cases, the VA attorney may send to the CO a list of the documents needed.

(4) Forward a copy of the protest override package, as provided in M833.104-71(c) below, to RMCS, via the email address at EDProtests@va.gov within 3 days of the approval.

M833.104-71 Statutory Stay of protests to GAO.

(a) *Stay of contract award or contract performance.* The contracting officer must stay contract award or performance if the protest was filed in a timely manner to trigger the stay as provided in [FAR 33.104\(b\)\(1\)](#) or [FAR 33.104\(c\)\(1\)](#), respectively. The stay must remain in place until the protest is resolved or the HCA has determined that a contract must be awarded or contract performance must begin/continue pursuant to [FAR 33.104\(b\)\(1\)](#) or [FAR 33.104\(c\)\(2\)](#), respectively. A contract award or contract performance will not be authorized until the VA attorney has notified GAO of the HCA's findings as required by [FAR 33.104\(b\)\(2\)](#) and [FAR 33.104\(c\)\(3\)](#), respectively.

(b) *Override of stay.* When it is determined that a contract must be awarded or contract performance must begin/continue, the contracting officer must assemble a protest override package as provided in paragraph (c) below. The contracting officer must submit the package to its designated VA attorney for legal review/opinion to ensure that the documents are accurate, complete, and legally sufficient. After receipt of legal review/opinion, the contracting officer must submit the package to the HCA for approval.

(c) *Protest override package.* The protest override package must include the following documents:

(1) Contracting Officer Statement. The statement should include a brief history of the procurement, protest allegations, analysis of each allegation and basis/es for prevailing, and a brief conclusion.

(2) Mission Impact Statement. The statement should be prepared by a subject matter expert of the supplies or services being procured and include the adverse consequences that will result if an override is not obtained.

(3) Determination and Findings (D&F). The findings should provide the statutory or regulatory basis for the override (i.e., urgent and compelling reasons or best interest of the Government), address any significant adverse consequences, address any

reasonable alternatives to the override, cost associated with proceeding with the override, and impact of the override on competition and integrity of the procurement system. The D&F must be signed by the HCA.

(4) Justification and Approval for Sole Source, if applicable

(5) VA attorney legal review/opinion

M833.105 Protests at the U.S. Court of Federal Claims.

(a) Upon receipt of notification of a protest filed in the Court of Federal Claims (COFC) either from the protester's counsel or from the Department of Justice (DOJ), contracting officers must immediately provide written notice to their supervisor, the VA attorney, and RMCS via the email address at EDProtests@va.gov. The contracting officer can review the court's rules and procedures as provided in [FAR 33.105](#).

(b) The contracting officer is responsible for consulting with the VA attorney as necessary. The assigned attorney will meet with the contracting officer to discuss in detail what documents are required for the administrative record. These documents must be sent to the VA attorney by an established due date for review and submission to the DOJ.

(c) Upon conclusion of the case, the contracting officer must immediately inform its supervisor and RMCS of the court's opinion or order(s).

Subpart M833.2—Disputes and Appeals

M833.209 Suspected fraudulent claims.

Acquisition personnel who suspect fraudulent activity should immediately provide the information to the Department of Veterans Affairs Office of Inspector General (OIG) using the webform located at <https://www.va.gov/oig/hotline/default.asp> to submit a complaint.

M833.211-70 Contracting officer's final decision.

(a) When a dispute cannot be settled by mutual agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer must provide the contractor the contracting officer's final decision in the matter. The decision must be made within the time frames stipulated in the FAR, otherwise the claim may be deemed denied.

(b) The contracting officer must identify the decision, in writing, as a final decision and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. The contracting officer must ensure that any required legal or technical review or concurrence is completed (see VAAR subpart 801.6) prior to rendering the final decision on the matter.

(c) The contracting officer should reference the Civilian Board of Contract Appeals (CBCA) as the board having jurisdiction on appeals.

(d) The CBCA encourages the prompt, efficient and inexpensive resolution of contract disputes through the use of alternative dispute resolution (ADR). It uses a variety of techniques intended to shorten and simplify, when appropriate, the formal proceedings normally used to resolve cases.

(e) When jointly requested by an agency and its contractor, the Board also provides to executive agencies alternative dispute resolution services on contract-related matters not covered by the Disputes statute (historical title of Act—Contract Disputes Act), whether those matters arise before or after a contract has been awarded.

(f) For more information on CBCA or ADR see: <https://cbca.gov/>.

M833.212 Contracting officer's duties upon appeal.

(a) When a contracting officer receives notice of appeal in any form, the contracting officer is required to do the following:

(1) Acknowledge receipt and annotate the appeal with the date of mailing (or date of receipt, if otherwise conveyed).

(2) Within 10 days, forward the original notice of appeal and a copy of the contracting officer's final decision letter to the assigned VA attorney and any other office that may be impacted.

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer must assemble and transmit to the VA attorney, an appeal file consisting of all documents pertinent to the appeal, including the following:

(1) The decision and findings of fact that are being appealed.

(2) The contract, all modifications, including specifications and pertinent modifications, amendments, revisions or changes to any specifications, plans and drawings.

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued.

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal.

(5) Any additional information considered pertinent.

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart M836.1—General

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M836.102	Definitions.
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Subpart M836.2—Special Aspects of Contracting for Construction

M836.202	Specifications.
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M836.209	Construction contracts with architect-engineer firms.
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M836.213	Special procedures for sealed bidding in construction contracting.
M836.213-470	Notice of award.
M836.213-70	Randolph-Sheppard Act compliance.
M836.213-71	Completion items.
M836.213-72	[Reserved]
M836.213-73	Additive or deductive bid line items.
M836.213-74	Notice to proceed
M836.272	Construction contracts with options.

Subpart M836.3—Two-Phase Design-Build Selection Procedures

M836.303-1	Phase One.
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Subpart M836.6—Architect-Engineer Services

M836.601-3	Applicable contracting procedures.
M836.602	Selection of firms for architect-engineer contracts.
M836.602-1	Selection criteria.
M836.602-170	Application of selection criteria.
M836.602-2	Evaluation boards.
M836.602-4	Selection authority.
M836.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold.
M836.604	Performance evaluation.
M836.605-70	Architect-Engineer prepared independent government estimates.
M836.606	Negotiations.
M836.606-72	Contract price.

M836.606-73 Statutory fee limitation.

**Subpart M836.70— Unique Forms for Contracting for Construction,
Architect-Engineer Services, and Dismantling, Demolition,
or Removal of Improvements**

[RESERVED]

Subpart M836.71—Procedures for VA Evaluation Boards

M836.7100 General procedures.
M836.7101 Conduct of evaluation boards.

Attachments:

[M836-A](#) Sample Notice of Award
[M836-B](#) Notice to Proceed Template
[M836-C](#) A-E Evaluation Board Appointment Memorandum Template
[M836-D](#) Combined Preselection/Selection Board Report Template
[M836-E](#) Preselection Board Report Template
[M836-F](#) Selection Board Report Template

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart M836.1—General

M836.102 Definitions.

Completion items means construction needs identified which were omitted from the design, but that are essential to the operation of a constructed facility within the approved scope of the project.

Completion items review board (CIRB) means the board that reviews all completion item requests to ensure that the submitted items and request are valid.

Critical path method (CPM) means a network analysis technique used to predict project duration by analyzing which sequence of activities (which path) has the least amount of scheduling flexibility (the least amount of float). Early dates are calculated by means of a forward pass using a specified start date. Late dates are calculated by means of a backward pass starting from a specified completion date (usually the forward pass' calculated project early finish date).

Independent government estimate (IGE) or Independent Government Cost Estimate (IGCE) is a cost estimate developed by the Government requiring activity based on requirements of a Statement of Work or Performance Work Statement (in the case of services) or other requirements and specification documents. In the Department of Veterans Affairs (VA) construction environment, the IGE is generally prepared by either the government's own design engineer or estimator, or by the Architect-Engineer firm that prepared the design.

Major acquisition when used in construction means an acquisition valued above \$20 million, including options. This includes capital projects (investment) that require special management attention because of their: (1) importance to the agency's mission; (2) high development, operating, or maintenance costs; (3) high risk; (4) high return; or (5) significant role in the administration of the agency's programs, finances, property, or other resources.

Network analysis system (NAS) means a schedule that demonstrates fulfillment of contract requirements as well as coordinating and monitoring work under the contract (including all activities of subcontractors, equipment vendors and suppliers).

Preconstruction orientation (sometimes referred to as the pre-performance conference, preconstruction conference, or postaward orientation conference) and commonly referred to as a "kick-off" meeting means a meeting generally held at the job site to establish local ground rules, both covered (e.g., labor standards clauses) and not

covered (e.g., VA local facility regulations) by the contract documents that are directly related to Contractor actions and interactions on the VA facility. The meeting can be conducted face-to-face, via teleconference or videoconference. The postaward orientation, or conference, serves as a substantive review of the contract terms and conditions prior to contractor work performance. The overall goal is to implement a postaward procedure that efficiently allocates time and resources.

Resident Engineer (RE) means an engineer that oversees major construction contracts). An RE, when appointed in writing, may serve as the contracting officer's representative (COR) on a contract provided such appointment would not place the appointee in a position to initiate a requirement, place an order, and receive, inspect and accept goods or services.

M836.103-70 Methods of contracting--policy.

(a) The VA has not been granted specific authority to conduct one-phase design-build procurements, therefore, the contracting officer shall not award a contract based on this solicitation method. The term "one phase design build" or "one-step turnkey selection procedures" means procedures used for the selection of a contractor to perform both the design and construction of a facility using performance specifications.

(b) When soliciting and awarding indefinite-delivery type contract vehicles for construction and Architect-Engineer (A-E) services, the contracting officer shall refer to the Indefinite-Delivery Indefinite-Quantity (IDIQ) Guide, for any guidance on IDIQs in general and specific construction-related guidance. See VAAM M816, Appendix M816-A.

Subpart M836.2—Special Aspects of Contracting for Construction

M836.202 Specifications.

(b) The following is a link to the Office of Construction and Facilities Management (CFM) website for the Technical Information Library (TIL) and the A-E Design Submissions Requirements Program Guide 18-15 (PG-18-15). The website provides design and construction standards for the VA. The [TIL](#) is the source for VA's electronic design and construction information.

M836.203 Government estimate of construction costs.

(d) A copy of the IGE, signed and dated by the preparer, shall be submitted to the contracting officer at the time of submission the Request for Procurement package. An updated/revised IGE will also be submitted to the contracting officer before release of a solicitation amendment that may affect price.

(e) [Contract Pricing Reference Guides](#) have been developed jointly by the Federal Acquisition Institute and Air Force Institute of Technology and, provide valuable information on quantitative techniques for contract pricing.

M836.205-70 Statutory cost limitations.

(a) Contracting officers shall not award contracts for minor construction projects in excess of the major construction statutory limit for a VA major medical facility project. For the purposes of this part, the term “*VA major medical facility project*” means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than the major construction statutory threshold as defined in 38 U.S.C. 8104. This amount is currently defined as exceeding \$20,000,000, in which case the appropriate type of funding and approval is required in advance of such awards.

(b) *Prohibition against splitting requirements.* Requiring activities and contracting officers shall not break down a project requirement into multiple projects that are each less than the statutory cost limitation, that when aggregated, would exceed the statutory major medical facility threshold set forth in 38 U.S.C. 8104(a)(3).

M836.209 Construction contracts with architect-engineer firms.

(a) This section applies to design-bid-build contracts only. No contract for construction of a project may be awarded to the firm that designed the project, or to its subsidiaries or affiliates, without the written approval of the Head of the Contracting Activity (HCA) or authorized representative. For the Office of Construction and Facilities Management (CFM), where the HCA approves the award of all construction contracts, the Deputy Senior Procurement Executive will be the approval authority.

(b) Any request for approval from the requiring official shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest. In no case, shall the A-E firm that prepared the drawings and specifications be awarded a contract, modification to existing contract or task order to supervise or inspect on behalf of the government, the construction of the facility involved.

M836.212 Preconstruction orientation.

(a) Attendees should include the prime contractor's representative and any identified subcontractors, contracting officer and the RE/Project Manager (PM), COR, requiring activity representatives, VA facility safety and security officials. The A-E of record may attend the preconstruction conference if the A-E's contract requires it.

(b) The contracting officer:

(1) Conducts the meeting, but the RE/PM, COR and requiring activity and other Government representatives should have a thorough understanding of the requirement and be prepared to address issues such as phasing of work (if any), government furnished property items, and coordination of access to the construction area, patient or restricted areas. VA Form 3386, Preconstruction Orientation Checklist, shall be used to document meeting discussions.

(2) Should resolve issues as noted in (1) above with key Government officials before the preconstruction orientation and present a unified VA position in the Contractor's presence, to achieve a clear and mutual understanding of all contract requirements and to identify and resolve potential problems. A preconstruction conference may be conducted face-to-face, via teleconference or videoconference.

(3) Shall inform the prime contractor of the necessity to include labor standard clauses in all subcontracts orally or with a preconstruction letter. The contracting officer shall document the discussion of the necessity to include labor standards ([FAR subpart 22.4](#) and VAAM M822.406-1), and subcontracting plan requirements ([FAR 19.704](#)) in all subcontracts.

(4) Shall remind the contractor that any errors or omissions in the contract drawings or specifications must be provided promptly but in no case later than the start of related work.

(5) Shall enter the preconstruction orientation data into VA's Electronic Contract Management System (eCMS).

(c) The role of Government representatives participating in the conference is to adequately convey and ensure that VA interests and resources are protected. The Preconstruction Conference is not the time to discuss potential change requests unless the changes have a direct impact on user mission, construction startup or contractor progress.

(d) A copy of the meeting minutes shall be placed in the official contract file and uploaded into eCMS in the Award Action Briefcase, under index number "C05 Pre-Construction Minutes."

M836.213 Special procedures for sealed bidding in construction contracting.

M836.213-470 Notice of award.

(a) The contracting officer shall provide the apparent successful bidder a notice of award for construction contracts where performance or payment bonds are required.

(b) A notice of award:

(1) Is used to provide a copy of the contract in accordance with [FAR 14.408-1](#).

(2) Does not authorize the successful bidder to perform.

(3) Advises the contractor to provide bonds and insurance.

(4) Reminds the contractor that any delays in submission for approval of the bonds and insurance certificate may delay issuance of the Notice to Proceed (NTP).

(c) The notice of award can be issued by any formal written means such as a letter or electronic means. The notice should be substantially the same as the sample format provided as Attachment [M836-A](#) and filed in the contract file as well as in the eCMS briefcase under index number "C08, Award Letter/Contract Receipt/Notice to Proceed."

M836.213-70 Randolph-Sheppard Act compliance.

(a) The Randolph-Sheppard Act, 20 U.S.C. 107, gives priority to blind persons licensed by a State agency in the operation of vending facilities on Federal property (owned, leased, or occupied). The Executive Director, Office of Construction and Facilities Management, establishes VA policies for achieving Randolph-Sheppard Act compliance and liaisons between VA and the Department of Education, the Federal department that oversees program compliance. The Executive Director, Office of Construction and Facilities Management is responsible for preparation and submission of VA's annual report of activity to the Department of Education.

(b) Locating sites for operation of vending facilities by blind vendors. VA contracting activities shall ensure the required determination is made regarding whether there is a satisfactory site or sites for the location and operation of vending facility space by blind vendors before undertaking procurement actions related to the following:

(1) *Owning, renting or leasing buildings.* In accordance with 34 CFR 395.31(a), effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor.

(2) *Constructing, substantially altering, or renovating or substantially renovating occupied buildings.* In accordance with 34 CFR 395.31(b), the design for such construction, substantial alteration, or renovation or substantial renovation must include a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. As used in this part and as referenced in 34 CFR 395.31(b), *substantial alteration or renovation of a building* means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor. (Note: Converting patient wards to private rooms probably would not meet this definition, nor would repairs to a roof, seismic reinforcement, or many other structural alterations. Regional Counsels can advise whether specific projects will require notification.)

(c) *Written notice to State licensing agency of intention to acquire or otherwise occupy buildings and determination that a building contains a satisfactory site or sites for the location and operation of a vending facility by a blind vendor.* The VA shall provide a written notice to the appropriate State licensing agency of its intention to acquire or otherwise occupy such buildings as set forth in 34 CFR 395.1(a) and (b) when the VA undertakes to acquire by ownership, rent, or lease, or to otherwise occupy a building—

(1) Containing at least 15,000 square feet of interior space to be used by the Government (in buildings where services are to be provided to the public); and

(2) In which 100 or more Federal employees are located during normal working hours.

(d) *Content of written notice.* Such written notice shall—

(1) Be provided by certified or registered mail with return receipt;

(2) Be provided as early as practicable, but no later than 60 days prior to such intended action;

(3) Indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied; and,

(4) Further assure that the State licensing agency, subject to the approval of the Secretary of the Department of Veterans Affairs, as delegated to the Executive Director, Office of Construction and Facilities Management, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building.

(e) A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary of the Department of Education.

M836.213-71 Completion items.

Approval of completion items for major construction projects shall be subject to review by the Completion Items Review Board (CIRB). The authority, composition and procedures for the CIRB are described in [VA Directive 0411](#), Completion Items Review Board.

M836.213-72 [Reserved]

M836.213-73 Additive or deductive bid line items.

(a) For additive or deductive bid line items, the contracting officer shall:

(1) Use a bid schedule with—

(i) A first or base bid line item covering the work generally as specified; and,

(ii) A list of priorities that contains one or more additive or deductive bid line items that progressively add or omit specific features of the work in a stated order of priority.

(2) Before opening the bids, record in the contract file the amount of funds available for the project.

(3) Determine the low bidder and the bid line items to be awarded in accordance with the procedures in the clause at 852.236-92, Notice to Bidders—Additive or Deductive Bid Line Items.

(b) Contracting officers shall not modify the resulting contract to include any additive or deductive bid line item that was not made a part of the contract at the time of award.

(c) Contracting officers shall not mix additive and deductive bid line items in the same solicitation.

M836.213-74 Notice to proceed.

(a) The NTP is the formal instruction from the contracting officer to the contractor to start work on the project. This notice authorizes the contractor to commence work and establishes the start date for the contract performance period. The resident engineer, COR and requiring activity shall coordinate with the contracting officer in establishing this date to ensure that the start date is consistent with any critical needs. The NTP letter may instruct the contractor to commence work for actual construction work or to commence work limited to a particular segment of the work (e.g., mobilization, attendance at preconstruction conference, preparatory civil work). Contracting officers shall be diligent in making full contracting awards after issuance of a limited or partial NTP as the Board of Contract Appeals has held that unreasonable delays in making full award to be a compensable constructive suspension of work. See Attachment [M836-B](#) for a sample NTP template.

(b) The NTP may:

(1) Be sent only after the contractor has provided performance and payment bonds or payment protection, completed contract forms, where applicable, and the contracting officer has accepted those documents.

(2) Be sent by traceable means such as certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The contracting officer

shall establish a start and completion date that takes into consideration the time required for the NTP to arrive by registered mail or other proven method of delivery that provides evidence of receipt.

(3) Advise the contractor of the date the actual construction work shall commence and the number of calendar days or specific date the work shall be completed. The commencement date may also be stated as a number of calendar days after contractor's receipt of the notice to proceed. The completion date may be stated in the number of calendar days after the commencement date or after contractor's receipt of the notice to proceed. Entries in Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration or Repair), Block 11 shall be adjusted accordingly.

(c) At the time the NTP is sent to the contractor or presented at the preconstruction orientation, the contracting officer shall furnish a copy to the COR and, if requested, to the RE/PM or the Chief, Engineering Service.

(d) The contracting officer shall file a copy of the NTP along with the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service in the official contract file and in the associated eCMS briefcase. When certified mail or other method of certified delivery is used, the contracting officer shall also file the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service with the notice to proceed in the contract file and eCMS briefcase under index number "C08, Award Letter, Contract Receipt, Notice to Proceed."

M836.272 Construction contracts with options.

In accordance with [FAR 22.404-12](#), contracting officers are required to incorporate a current wage determination at the exercise of option years and any extension period. For additional guidance pertaining to applicability of the Construction Wage Rate Requirements Statute, 40 U.S.C. chapter 31, subchapter IV, in construction contracts with option terms see VAAM M822.404.

Subpart M836.3—Two-Phase Design-Build Selection Procedures

M836.303-1 Phase one.

(b) The number and identity of the most highly qualified offerors selected to submit phase two proposals are considered "Source Selection Information" as defined in [FAR 2.101](#) and shall only be disclosed to persons specifically granted access to source selection sensitive information.

Subpart M836.5—Contract Clauses

M836.515-70 Network analysis system—critical path method.

(a) The VA requires the use of the NAS-CPM on all major acquisitions or other VA projects where the best interest of the Government would be served by its use. It is intended to:

(1) Obtain information and data that are needed to identify, manage, and resolve potential project problems;

(2) Control documents, manage, and monitor job site progress; and,

(3) Establish realistic construction project duration(s).

(b) Upon approval by the contracting officer, the CPM becomes the approved project schedule and payments for work performed may be made.

(c) The effect that changes or delays have on a CPM schedule is determined by a comparison of the schedules before and after the delaying activities is incorporated into the CPM Network. Normally, the contractor is entitled to additional contract time only if the delay extends beyond the contract completion date. Additionally, delays to the project, due to strikes, weather, and other acts of God, or facts out of the contractor's control are usually the only scheduling problems that require an "after-the-fact" CPM analysis. Once work on the project resumes, the CPM analysis can be made to determine the delay impact to the schedule.

(d) Additional information concerning the [NAS](#) can be found at the CFM technical library.

Subpart M836.6—Architect-Engineer Services

M836.601-3 Applicable contracting procedures.

(e) See [Architect-Engineer Information](#) and [Cost Estimating](#), CFM for additional instruction and guidance.

M836.602 Selection of firms for architect-engineer contracts.

M836.602-1 Selection criteria.

(6)(i) The following selection criteria along with those specified in [FAR 36.602-1](#) shall be listed in their relative order of importance in the announcement:

(A) The extent to which potential contractors identify and commit to the use of service-disabled veteran-owned small businesses, veteran-owned small businesses, and other types of small businesses as subcontractors.

(ii) Whenever post-award construction services will be required of the A-E firm, the following selection criteria shall be listed in relative order of importance in the announcement:

Experience in construction period services to include professional field inspections during the construction period, review of construction submittals, support in answering requests for information during the construction period, and support of construction contract changes to include drafting statements of work, and cost estimates shall be included as an evaluation criterion when construction period services is included in the statement of work for A-E services.

M836.602-170 Application of selection criteria.

(a) Boards will evaluate firms' qualifications strictly on the basis of the announced selection criteria and their stated order of importance.

(b) The board shall consider the specific experience and qualifications (i.e., education, training, registration, certifications, overall relevant experience, and longevity with the firm) of personnel proposed for assignment to the project, and their record of working together as a team when evaluating professional qualifications. The lead designer in each discipline must be registered but does not have to be registered in the particular state where the project is located.

(c) When evaluating specialized experience, do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition. The board shall consider at least five, similar projects and how well the proposal addresses technical capabilities in design quality management procedures, Computer-Aided Design and Drafting/Building Information Modeling, equipment resources, and laboratory requirements for the firm and any proposed subcontractors. Where appropriate, also evaluate their experience in energy conservation, pollution prevention, waste reduction and the use of recovered materials. The effectiveness of their proposed project team (including management structure, coordination of disciplines, subcontractors, and prior working relationships) should also be examined.

(d) When evaluating capacity, consider the volume of work awarded by VA during the previous 12 months. Use data extracted from the Federal Procurement Data System. Consider the full potential value of any current indefinite delivery contracts that a firm has as well. Also, assess the available capacity of key disciplines to perform the work in the required time.

(e) When evaluating past performance, consider superior performance ratings on recently completed VA projects as well as the reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness. Also, consider, as appropriate, the record of significant claims against the firm because of improper or incomplete architectural and engineering services. When evaluating location consider knowledge of the locality separately from geographic proximity. Examples include knowledge of geological features, climatic conditions, or local construction methods that are unusual or unique.

M836.602-2 Evaluation boards.

(a) The Head of the Contracting Activity, Office of Construction and Facilities Management, or designee; the Director of Design and Construction Services for the National Cemetery Administration; the Director, Office of Administration and Facilities for Veterans Benefits Administration; or for field facility projects, the facility or Veterans Integrated Service Network (VISN) Chief of Engineering shall:

(1) Nominate board members.

(2) Ensure the Chairperson nominated is a registered or licensed engineer, architect or land surveyor, as appropriate for the type of work and has completed source selection training.

(3) Ensure non-registered or unlicensed engineers, architects, and land surveyors to serve on selection boards have comparable education, knowledge and experience that would qualify the individual for professional registration.

(4) Establish and maintain records of each non-registered or unlicensed individual's education, knowledge and experience relied upon in determining nomination for membership on preselection or selection boards is appropriate for the type of work being procured.

(5) Ensure all board members comply with the procurement integrity requirements of [FAR 3.104](#) and sign a Nondisclosure Agreement. Provide the certifications to the contracting officer for the official contract files.

(b) The Head of the Contracting Activity, for the Office of Construction and Facilities Management, or designee; the Director, Office of Construction Management for National Cemetery Administration; the Director, Office of Administration and Facilities for Veterans Benefits Administration; or for field facility projects, the facility or Veterans Integrated Service Network Acquisition Director shall:

(1) Use Attachment [M836-C](#), A-E Evaluation Board Appointment Memorandum Template, to document the appointment of evaluation board members to the selection boards.

(2) Ensure that the Chairperson has equivalent technical experience and has extensive experience on A-E evaluation boards. A registered or licensed professional in engineering, architecture, or landscape architecture is preferred.

(3) Ensure total board membership consists of no fewer than three and no more than five members including the Chairperson.

(4) Ensure boards are composed of highly qualified professional employees having collective experience in architecture, engineering, construction, and acquisition, as well as the specific type of technical work being contracted. One of the members shall be a Level III FAC-C certified contract specialist.

(5) Ensure nongovernment consultants are not used as voting members.

M836.602-4 Selection authority.

The Executive Director, Office of Construction and Facilities Management, or designee; the Director, Office of Construction Management for National Cemetery Administration; the Director, Office of Acquisition for Veteran Benefits Administration; or for field facility projects, the facility or Veterans Integrated Service Network Acquisition Director, or any warranted individual one level above the contracting officer making the award, are designated as the approving officials for the recommendations of the respective evaluation boards.

M836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The evaluation board may use either of the procedures provided in [FAR 36.602-5](#) to select firms for A-E contracts below the simplified acquisition threshold. The board will document its decision in a combined Preselection/Selection Board Report (see Attachment [M836-D](#)).

M836.604 Performance evaluation.

The COR or resident engineer shall prepare a separate performance evaluation in Contractor Performance Assessment Report System (CPARS) after actual construction of any contract \$35,000 or more, and for each A-E contract that is terminated for default regardless of contract value. Ordinarily, the evaluating official should be the person most familiar with the A-E contractor's performance.

M836.605-70 Architect-Engineer prepared independent government estimates.

The contracting officer shall ensure that the A-E prepared IGE has been updated to include any adjustment for escalation of prices before relying on an estimate for price analysis purposes. The IGE shall also be updated to reflect any design changes (both additions and deletions) injected by the Government since receipt of the initial 100%

design package. This is especially important when dealing with an older design. Verify that facility occupants or requirements have not changed without a commensurate adjustment to the project cost estimate.

M836.606 Negotiations.

M836.606-72 Contract price.

(a) Where negotiations with the top-rated highly qualified firm are unsuccessful, the contracting officer shall, after coordination with the Executive Director, Office of Construction and Facilities Management, the Director, Office of Construction Management for the National Cemetery Administration, or the facility or Veterans Integrated Service Network Acquisition Director, technical reviewers, and legal reviewers, as appropriate, terminate the negotiations and undertake negotiations with the firm next in order of preference.

(b) The contracting officer shall submit a recommendation for award of the contract at the negotiated fee to the Associate Executive Director, Office of Facilities Acquisition for the Office of Construction and Facilities Management; the Director, Office of Construction Management for National Cemetery Administration or for field facility projects, the facility or Veterans Integrated Service Network Acquisition Director, technical reviewers, and legal reviewers, as appropriate. A copy of the negotiation memorandum prepared in accordance with [FAR 15.406-3](#) and, a “Cost and Pricing Analysis Report” if received, shall accompany the recommendation.

M836.606-73 Statutory fee limitation.

The six percent fee limitation applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the six percent limit. Additionally, in rare cases it may be necessary to deduct the cost of what is referred to as “lost design” (uncompensated A-E firm design effort). To assure that the fee limitation is not violated, the contracting officer shall maintain suitable records to be able to isolate the amount in the total fee to which the six percent limitation applies.

**Subpart M836.70—Unique Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements –
[Reserved]**

Subpart M836.71—Procedures for VA Evaluation Boards

M836.7100 General procedures.

(a) *Information used by boards.* Boards will only consider the following information:

- (1) SF 330, Parts I and II.
- (2) Any required supplemental information.
- (3) Documented performance evaluations from Architect-Engineer Contract Administration Support System.
- (4) VA contract award data.

A board will not assume qualifications which are not clearly stated in a firm's submission or available from CPARS. A board will review the entire submission of each firm and not excerpts or summaries. A firm will not be contacted to clarify or supplement its submission, except during the interviews with the most highly qualified firms. Boards shall not consider any cost factors.

(b) *Determining A-E proposal responsiveness.* A-E submissions shall be handled by the Government in accordance with [FAR 15.207](#) and [FAR 15.208](#), including the late proposal rules in [FAR 15.208](#). A firm will not be considered if it's SF 330, Part I is not signed, unless the SF 330, Part I is accompanied with a signed cover letter or a current signed SF 330, Part II. In accordance with [FAR 36.603\(b\)](#), do not consider a firm that does not submit a SF 330, Part II with its SF 330, Part I, or have one on file. Firms with SF 330, Part II on file less than 3 years old must be considered by the board provided they have responded with Part I of the SF 330. A firm may not be eliminated simply for failing to submit certain information or for altering the format of a SF 330. However, a firm may be recommended as not qualified or ranked low if missing, confusing, conflicting, obsolete or obscure information prevents a board from reasonably determining that a firm demonstrates certain required qualifications.

(c) *Evaluation method.* A board may use any qualitative method such as adjectival or color coding but not numbers, to evaluate and compare the qualifications of the firms relevant to each selection criterion.

(d) *Conduct of board meetings.* Board meetings should be held in areas isolated as much as possible from distractions. Sufficient time should be set aside for the meetings to proceed continuously until they are finished. Board members should schedule their other activities so that interruptions of the board meetings are held to an absolute minimum.

(e) *Reports.* The documentation must reflect the final consensus of the board. If individual evaluations are included, then the report must discuss how any significant differences among the evaluations were resolved. A board must retain documents, and worksheets generated during its evaluation so that the evaluation is sufficiently documented, and allows review of the merits of a potential bid protest. Failure to retain evaluation documents will leave the contracting officer susceptible to the bid protest risk of presenting a record with inadequate supporting rationale for the Comptroller General or court to find the selection decision reasonable. Handwritten worksheets are

acceptable. Label the cover and each page of the report containing source selection information with "SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104" and protect the documents as required by [FAR 3.104-5](#). Protect personal worksheets as well. Board members must not discuss the evaluation results with anyone who does not have a specific acceptable reason to know.

M836.7101 Conduct of evaluation boards.

(a) *Preselection board.* The board will completely evaluate each firm, even if a firm does not demonstrate certain required qualifications. The board must discuss the evaluation of all firms until consensus on each is reached. The firms that demonstrate better aggregate qualifications relevant to the primary selection criteria are considered highly qualified. A preselection board will not consider any secondary selection criteria. A preselection board will not be restricted to a specific or maximum number of firms for referral to a selection board. The Preselection Board Report (see Attachment [M836-E](#)) must clearly identify the specific weak or deficient qualifications of each firm not recommended as highly qualified. The preselection board recommends at least three firms considered to be the most highly qualified, in order of preference.

(b) *Selection Board.* All members must personally evaluate the SFs 330 of all of the highly qualified firms. If more than one contract will be awarded from the same synopsis, then sufficient firms must be recommended to ensure that at least two most highly qualified firms remain "in reserve" when negotiations commence on the final contract. After the interviews or presentations, a board will, by consensus, rank the most highly qualified firms in order of preference using the primary selection criteria. If two or more firms are technically equal, secondary criteria – location and equitable distribution of work - may be used as "tie-breakers" and the final ranking of firms decided. Firms are technically equal when there is no meaningful difference in their aggregate qualifications relative to the primary criteria. If more than one contract will be awarded from the same synopsis, the number of highest qualified firms must at least equal the number of anticipated contracts. The secondary factors will be used to establish a ranking order for the highest qualified firms, and hence, the order for negotiation. The A-E Selection Board Report (see Attachment [M836-F](#)) must:

(1) Clearly describe the reasons why each eliminated firm was less qualified than the most highly qualified firms,

(2) Summarize the relative strengths of each most highly qualified firm with respect to the selection criteria, and

(3) Clearly describe the rationale for the relative ranking of each firm.

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 837—SERVICE CONTRACTING

Subpart M837.1—Service Contracts—General

Sec.

M837.102	Policy.
M837.102-70	Performance specifications and quality assurance surveillance plans.
M837.102-71	Guidebook for the acquisition of services.
M837.102-72	Market research report guide.
M837.104-70	Certification non-personal service contracts.
M837.107-70	Service contract labor standards wage adjustments.

Subpart M837.2—Advisory and Assistance Services

M837.270	Acquisition of audit services.
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Subpart M837.4—Nonpersonal Health Care Services

M837.401	Policy.
M837.401-70	Performance specifications and quality assurance surveillance plans for medical services.
M837.401-71	Guidance for health care resources contracting—buying.

Subpart M837.70—Mortuary Services

M837.7000	General.
M837.7001	[Reserved]
M837.7002	Method of Acquisition.
M837.7003	Area of performance and distribution of contracts.
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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M837—SERVICE CONTRACTING

Subpart M837.1—Service Contracts—General

M837.102 Policy.

Each head of the contracting activity (HCA) shall ensure that the Integrated Oversight Process, as prescribed in Procurement Policy Memorandum [2017-01](#), is followed to ensure:

- (a) Performance-based Service acquisitions are used to the maximum extent;
- (b) Competition is fully promoted;
- (c) Adequate evaluation factors are utilized including cost/price analysis; and
- (d) Conflicts of interests are avoided.

M837.102-70 Performance specifications and quality assurance surveillance plans.

In addition to the information contained in [FAR 37.1](#), additional material on conducting performance-based acquisition and quality assurance surveillance plans for services can be found in the Office of Federal Procurement Policy’s “[Steps to Performance-Based Service Acquisition Guide](#)”.

M837.102-71 Guidebook for the acquisition of services.

The [Acquisition Center of Excellence for Services](#) was established to provide a clearinghouse of service contract best practices for both the public and private sectors. The Office of Federal Procurement Policy has partnered with the Department of Defense to use the [Defense Acquisition University’s Acquisition Community Connection, or Community Hub](#) to comply with the requirement imposed by the Service Acquisition Reform Act. Acquisition personnel are encouraged to use this resource to research best practices, guidance and other internet links.

M837.102-72 Market research report guide.

See the [VA Market Research Guide for Acquisition Teams](#) for guidance on use of the Market Research Report to conduct and document market research.

M837.104-70 Certification of non-personal services contracts.

The contracting officer shall ensure that the contract file contains a Non-Personal Services Contract Certification, prepared by the program office documenting the analysis that neither the services nor the manner in which they will be managed will result in personal services.

M837.107-70 Service contract labor standards wage adjustments.

The contracting officer shall refer to the [Fair Labor Standards Act & Service Contract Labor Standards Price Adjustment Guide](#) for guidance on calculating contract price adjustments resulting from changes in the Service Contract Labor Standards minimum wage rates and fringe benefits or changes in the Fair Labor Standards Act minimum wage.

Subpart M837.2—Advisory and Assistance Services

M837.270 Acquisition of audit services.

Project offices with an Office of Inspector General shall refer to the [Advisory and Assistance Services—A Practical Reference Guide](#) when developing requirements for advisory and assistance services. This guide was prepared at the request of the President's Council on Integrity and Efficiency Inspection and Evaluation Committee.

Subpart M837.4—Nonpersonal Health Care Services

M837.401 Policy.

M837.401-70 Performance specifications and quality assurance surveillance plans for medical services.

Medical Product and Service Codes Q501-Q527 are exempt from performance work statement (PWS) guidance. However, sample PWS' and quality assurance surveillance plans for Healthcare Procurements are located at the VA Business Intelligence Tool website. Additional samples can be found on the [Defense Acquisition University website](#).

M837.401-71 Guidance for health care resource services—buying.

Contracting officers are responsible for procuring health care resources in accordance with the procedures provided in [VA Directive 1663, Health Care Resources Contracting—Buying](#).

Subpart M837.70—Mortuary Services

M837.7000 General.

This subpart establishes procedures for the procurement of funeral and burial services for deceased veterans, as provided in 38 U.S.C. 2302, 2303, and 2308 when it is determined that a contract is more efficient and cost-effective than the use of a purchase card.

M837.7001 Reserved.

M837.7002 Method of acquisition.

(a) *Requirements type contract.* Each Veterans Health Administration (VHA) Regional Procurement Office of Veterans Benefits Administration (VBA) regional office shall consider using a requirements contract for the estimated requirements of mortuary services for unclaimed veteran remains within their region when the estimated annual requirements for such services are expected to reach ten or more. Use a requirements type contract (see [FAR 16.503](#)).

(b) *Purchase card.* Where no contract exists, use the purchase card to obtain mortuary services. Or, if proceeding with a contract, payment terms should be included to use the purchase card as a method of payment.

M837.7003 Area of performance and distribution of contracts.

(a) Contracts for mortuary services shall define the geographical area to be covered by the contract by—

Using political boundaries, streets, or other features as demarcation lines; and,

Identifying the carrier terminal to be used as a pickup or delivery point.

(b) Copies of the contract shall be distributed to each facility authorized to use the contract.

M837.7004 Unclaimed remains.

(a) VBA procedures at [38 CFR 3.1708\(d\)](#) provide burial procedures when a veteran's remains are unclaimed and the Director of the VA regional office in the area in which the veteran died is responsible for completing arrangements for burial.

(b) [VHA Handbook 1601B.04, Decedent Affairs](#), provides burial procedures for situations where the remains of a veteran at a VA facility or a non-VA facility under authorized admission at VA expense are unclaimed and the facility Director is responsible for requesting funeral and burial services.

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M841—ACQUISITION OF UTILITY SERVICES

Subpart M841.1—General

Sec.

- M841.101 Definitions.
- M841.103 Statutory and delegated authority.

Subpart M841.2—Acquiring Utility Services

- M841.201 Policy.
- M841.202 Procedures.
- M841.203 GSA assistance.
- M841.204 GSA areawide contracts.
- M841.205 Separate contracts.

Attachment

[M841-A](#), Request for Delegation of Authority to Procure Utilities (Sample)

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M841—ACQUISITION OF UTILITY SERVICES

Subpart M841.1—General

M841.101 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Indefinite term contract means a month-to-month contract for utility services that may be terminated by the Government upon proper notice. Such termination is apart from the procedures set forth in [FAR part 49](#).

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

M841.103 Statutory and delegated authority.

(b)(1) Except as provided in paragraph (b)(2), VA contracting officers seeking to award contracts for utility services shall first obtain a delegation of authority to award such contracts from the General Services Administration (GSA).

(2) Contracting officers are not required to obtain a delegation of authority from GSA for the following:

(i) Connection charges. The Assistant Commissioner for Procurement, GSA, has delegated the Secretary of Veterans Affairs authority to enter into public utility contracts for connection charges for utility services.

(ii) Authorizations to use utilities under GSA areawide contracts (see [FAR 41.204](#)).

(iii) Contracts under one year (see [FAR 41.103\(b\)](#)).

(c) Contracting officers shall submit requests for delegation of authority directly to GSA. Delegation requests may not be for contract periods in excess of ten years (40 U.S.C. 501(b)(1)(B)). (See Attachment [M841-A](#), Request for Delegation of Authority to Procure Utilities (Sample)).

(d) The authority described in [M841.103\(b\)\(2\)\(i\)](#) delegated to the Secretary is further delegated to the Senior Procurement Executive (SPE) and is further delegated to the head of the contracting activity, and to VA contracting officers within the limits of their warrants.

Subpart M841.2—Acquiring Utility Services

M841.201 Policy.

(b) Notwithstanding the policy as set forth at [FAR 41.201\(b\)](#), in accordance with a FAR Class Deviation dated January 31, 2020, the VA is exempt from the requirement to acquire utility services by a bilateral written contract from regulated providers. The heads of the contracting activities will develop internal policies and procedures.

(f) VA complies with the current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(g) Rates established by an independent regulatory body—

(1) Are considered “prices set by law or regulation”;

(2) Are sufficient to set prices without obtaining certified cost or pricing data (see [FAR subpart 15.4](#)); and

(3) Are a valid basis to determine that prices are fair and reasonable.

(h) Compliance with the regulations, practices, and decisions of independent regulatory bodies are not a substitute for the procedures at [FAR 41.202\(a\)](#).

M841.202 Procedures.

In accordance with a FAR Class Deviation dated January 31, 2020, the VA is exempt from the procedures listed in [FAR 41.202](#) when acquiring utility services.

M841.203 GSA assistance.

(a) Notwithstanding a GSA delegation to VA of authority to contract for utility services, contracting officers may still seek assistance from GSA in accordance with [FAR 41.203\(b\)](#). This includes when contracting for connection charges (see both [FAR 41.103\(b\)](#) and [M841.103\(b\)\(2\)\(i\)](#)).

M841.204 GSA areawide contracts.

(c)(1) Notwithstanding the policy as set forth at [FAR 41.204\(c\)\(1\)\(i\)-\(ii\)](#), the VA is exempt from the requirement to utilize GSA areawide contracts on a mandatory basis.

(3) If VA contracting officers elect to use GSA areawide contracts, VA is exempt from the requirement to use a written contract. The contracting officer shall execute the Authorization and attach it to a [Standard Form \(SF\) 26, Award/Contract](#), along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

M841.205 Separate contracts.

(e) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(f) Requests for proposals shall state the anticipated service period in terms of months or years.

(g) Solicitations may permit offerors the choice of proposing on the basis of—

- (1) A definite term not to exceed the anticipated service period; or
- (2) An indefinite term contract.

(h) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

- (1) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or
- (2) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts, or more favorable terms and conditions.

(i) *Connection and service charges.* The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is as follows:

(1) No connection charge.

(2) Termination liability charge. Use when necessary to secure the required services. The liability charge must be not more than the agreed connection charge, less any net salvage material costs.

(3) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the SPE.

(4) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(j) *Installation of Government-owned distribution lines and facilities.* Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be accomplished in accordance with [FAR part 36](#).

(k) *Construction and labor requirements.* Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in [FAR 36.102](#), construction labor standards may apply (see paragraph (j)).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART M842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart M842.1—Contract Audit Services

Sec.
M842.102-70 Assignment of contract audit services—specific request procedures.

Subpart M842.2—Contract Administration Services

M842.272 Contract clause for Government construction contract administration.

Subpart M842.5—Postaward Orientation

M842.500 Scope of subpart.
M842.502-70 Key requirements for postaward orientation.
M842.503 Postaward conferences.
M842.503-1 Postaward conference arrangements.
M842.503-2 Postaward conference procedure.

Subpart M842.7—Indirect Cost Rates

M842.705 Final indirect cost rates.

Subpart M842.8—Disallowance of Costs

M842.801 Notice of intent to disallow costs.
M842.801-70 Audit assistance prior to disallowing costs.
M842.803 Disallowing costs after incurrence.

Subpart M842.12—Novation and Change-of-Name Agreements

M842.1202 Responsibility for executing agreements.
M842.1203 Processing agreements.

Subpart M842.15—Contractor Performance Information

M842.1502-70 Agency CPARS policy.
M842.1503-70 Agency CPARS procedures.

Attachment

[M842-A](#), Sample Postaward Conference Agenda

[M842-B](#), Sample Notification of Postaward Conference

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Subpart M842.1—Contract Audit Services

M842.102-70 Assignment of contract audit services—specific request procedures.

(a) *Audit support services.* When required, contracting officers shall request the assistance of the VA Office of the Inspector General (OIG), Office of Audits and Evaluations, to provide pre- and post-award review and advisory services associated with the award or modification of—

(1) Federal Supply Schedule and other contracts awarded by the VA National Acquisition Center, Strategic Acquisition Center or Technical Acquisition Center;

(2) Scarce medical specialist or sharing contracts awarded under the authority of 38 U.S.C. 7409 or 8153;

(3) Claims involving such contracts;

(4) Major construction contracts awarded by the VA Office of Construction and Facilities Management (CFM) (see [M836.205-70](#), Statutory cost limitations) and claims involving such contracts; and

(5) Contracts and contract actions not listed in (a)(1) through (a)(4) to include claims; terminations for cause, convenience, or default; cost-reimbursement type contracts; in support of litigation; contracts awarded using other than full and open competition; and in the circumstances described in FAR 15.404-2(a) pertaining to requests for field pricing assistance.

(b) Contracting officers shall submit a request for audit support services for contracts identified in paragraph (a) of this section to the VA OIG at mailbox OIG52AuditSupportServices@va.gov. The VA OIG will notify the contracting officer if the request for audit support services is accepted.

(c) *Authorized external audit support services.* Contracting officers are authorized to use the audit services of the [Defense Contract Audit Agency \(DCAA\)](#) or commercial audit services through the GSA Multiple Award Schedule program as needed. Before requesting the services of DCAA or utilizing commercial audit services through the GSA Multiple Award Schedule, contracting officers shall coordinate with the VA OIG, Office of Audits and Evaluations, to determine if they are able to provide the requested audit support within the required time period. Contracting officers shall include the request for support and coordination documentation from the OIG, Office of Audits and Evaluations, in the contract file.

(d) *Other types of pre-award and post-award field support services.* Contracting officers may use the support services of other agencies (e.g., the Defense Contract

Management Agency) to the extent feasible. Examples of such services include: pre-award surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Contracting officers obtaining support services from any other Government department or agency must do so on the basis of an approved and negotiated interagency support agreement. Additionally, contracting officers may request the assistance of either the VA OIG, Office of Audits and Evaluations, or the [Defense Contract Audit Agency](#) (DCAA) to provide pre- and post-award audit, review, and advisory services associated with other types of contracts or claims. Contracting officers must obtain an audit control number from the VA OIG, Office of Audits and Evaluations. For audit requests to DCAA, contracting officers shall send a formal request to conduct the audit directly to the nearest cognizant DCAA office.

(e) *Interagency agreements.* Interagency agreements are required between the VA and other Government departments or agencies for contract audit support services and require review and approval in accordance with VAAM part M801, [VAAR part 817](#) and [VAAM part M817](#).

Subpart M842.2—Contract Administration Services

M842.272 Contract clause for Government construction contract administration.

Contracting officers shall include the clause [852.242-70](#), Government Construction Contract Administration, as required by [VAAR 842.272](#) in all solicitations and contracts for construction expected to exceed the micro-purchase threshold when contract administration is delegated. The clause authorizes a designated administrative contracting officer to further delegate to a VA warranted Resident Engineer certain limited secondary delegations of contract administration. These delegated authorities will be limited as set forth in a Resident Engineer Letter of Delegation issued by the assigned contracting officer or administrative contracting officer. At no time shall the delegation exceed the designated Resident Engineer's limited warrant specified level of authority and dollar value.

Subpart M842.5—Postaward Orientation

M842.500 Scope of subpart.

This subpart establishes guidelines and requirements for planning, conducting, and documenting postaward orientation of contractors and subcontractors for the VA.

M842.502-70 Key requirements for postaward orientation.

(a) Contracting officers shall consider conducting postaward orientations based on the minimum considerations outlined in [FAR 42.502\(a\)-\(l\)](#). Postaward orientations may be especially beneficial to contractors who are small businesses (see [FAR 42.502\(i\)](#)) as they assist both Government and contractor personnel to achieve a clear

and mutual understanding of all contract requirements and identify and resolve early potential problems (see [FAR 42.501](#)). To ensure successful contract performance, contracting officers shall conduct postaward orientations for contracts at the following thresholds:

(1) For contract awards from above the SAT up to \$1 million, a formal postaward conference is not required; however, the contracting officer should conduct a postaward orientation, at a minimum, through a postaward letter in accordance with [FAR 42.504](#), if the minimum considerations as set forth in [FAR 42.502 \(a\)-\(I\)](#) warrant it.

(2) For contract awards over \$1 million, conduct the postaward orientation as a postaward conference in accordance with [FAR 42.503](#) or via a postaward letter in accordance with [FAR 42.504](#).

(3) For contract awards from \$5 million and above—a formal postaward orientation conference is required.

(b) *Specific types of contracts requiring postaward orientations.* The contracting officer shall conduct postaward orientations in accordance with [FAR 42.503](#) and [VAAM M842.503](#) for the following types of acquisitions: contracts for services (including installation and maintenance); construction (see [VAAM M836.212](#)); research and development; and complex supply requirements with intricate delivery schedules or other critical factors.

M842.503 Postaward conferences.

M842.503-1 Postaward conference arrangements.

(a) The contracting officer exercises final authority over all aspects of the postaward conference and may designate the Program Manager (PM) as postaward conference co-chairperson for services, complex supplies, and research and development contracts. See [VAAM M836.212](#), Preconstruction orientation, for guidance on construction postaward conferences.

(b) The contracting officer, as the chairperson, and the PM, as the co-chairperson, if designated, are responsible for coordinating the following—

(1) Preparing the agenda and conducting a preliminary meeting of government personnel;

(2) Determining the appropriate agenda items and scheduling the postaward conference;

(3) Reviewing the details associated with costs, schedule, risks, and performance of the contract to be discussed with the contractor;

(4) Establishing the time and place of the conference (not later than 21 calendar days after the award);

(5) Appointing a note taker to record meeting minutes;

(6) Ensuring that the appointed note taker prepares and distributes the meeting minutes of the conference to the contracting officer (for the official contract file), contractor, contracting officer's representative (COR), and others as required; and

(7) Preparing a summary report of the conference as a matter of record for the contract, documenting major issues, agreements, or disagreements.

M842.503-2 Postaward conference procedure.

(a) When a postaward conference is held, the contracting officer shall (for construction see [VAAM part M836](#) for appropriate guidance and checklist)—

(1) Participate in all postaward conferences;

(2) Prior to the conference, enter postaward conference planning notes and schedule into VA's electronic Contract Management System (eCMS);

(3) Notify other appropriate government representatives (e.g., COR, PM (if not designated as co-chairperson)) of the scheduled postaward conference date, time, and location;

(4) Hold pre-meetings with government attendees to discuss roles and to go over agenda and messaging; and

(5) Obtain contractor points of contact to include a list of key personnel (if not identified in their proposal or in the body of the contract), as well as a list of projected attendees for the postaward conference.

(b) The contracting officer shall discuss, at a minimum—

(1) Contract type;

(2) Delivery order procedures (if applicable);

(3) Contracting officer's authority;

(4) Unauthorized commitments;

(5) COR responsibilities;

(6) Security requirements;

(7) Extent of subcontracting (if applicable);

(8) Overview of contract clauses;

- (9) Special clauses or significant contract requirements;
 - (10) Quality Assurance Surveillance Plan, if applicable;
 - (11) Performance Objectives, Measures, and Standards, if applicable;
 - (12) OSHA issues and requirements, if applicable;
 - (13) Service Contract Labor Standards (Service Contract Act (SCA) Wage Determinations), if applicable;
 - (14) Flow down or special subcontractor requirements; if applicable;
 - (15) Contract change procedure;
 - (16) Issue resolution process;
 - (17) Billing, invoice approval and payment procedures;
 - (18) Any reporting requirements such as System for Award Management (SAM) or Contractor Performance Assessment Reporting System (CPARS) (e.g., Service Contracts Inventory and certain contractor Service Contract Reporting Requirements ([FAR 52.204-14](#)) and Service Contract Reporting Requirements for Indefinite-Delivery Contracts ([FAR 52.204-15](#)), if applicable;
 - (19) Use of ordering officers, if applicable;
 - (20) Deliverables requirements and schedule, if applicable; and
 - (21) Equal Opportunity for Veterans. If applicable the contracting officer shall brief or include a statement regarding the following: “This contract incorporates by reference the Equal Opportunity for Veterans clause, [FAR 52.222-35](#), enforced by the Office of Federal Contract Compliance Programs of the Department of Labor. Contractors may not discriminate against protected Veterans in recruitment, hiring, compensation, leaves of absence, or other terms, conditions or privileges of employment. Contractors with 50 or more employees must also adopt an affirmative action program for protected Veterans. The prime contractor shall include the Equal Opportunity for Veterans clause in subcontracts and purchase orders of \$150,000 or more. This description is not exhaustive, and the contractor should review the full clause at [52.222-35](#).”
- (c) For postaward orientation for contracts below \$1 million, the contracting officer or the PM shall at a minimum—
- (1) Identify the government representative responsible for administering the contract and the contracting officer;

(2) Cite any unusual or significant contract requirements;

(3) Forward a copy of the notice to the appropriate contractor personnel; and

(4) Place a copy of the written notice in the official contract file and upload a copy into eCMS in the Award Action Briefcase, and title the document “C05 Postaward / Pre-Performance Conference Minutes for Contract Number (insert contract number).”

(d) The contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite government representatives to a conference with the subcontractors, or the government may request the prime contractor to initiate a conference with subcontractors for complex, sensitive, or mission critical requirements.

Subpart M842.7—Indirect Cost Rates

M842.705 Final indirect cost rates.

(a)(3) When quick-closeout procedures are used as permitted by [FAR 42.708](#), the contracting officer must perform a review and validation of the contractor's data for accuracy and reasonableness of the proposed rates for negotiating the settlement of indirect costs for a specific contract.

Subpart M842.8—Disallowance of Costs

M842.801 Notice of Intent to disallow costs.

M842.801-70 Audit assistance prior to disallowing costs.

If a contracting officer determines that costs should be disallowed during the performance of a cost reimbursement, fixed-price incentive, or fixed-price redetermination contract exceeding the thresholds specified in [FAR 15.403-4](#), the contracting officer shall request audit assistance from the VA OIG at OIG52AuditSupportServices@va.gov. The VA OIG will notify the requestor if the request for audit assistance is accepted. For all other types of contracts and audit assistance requirements, and those requests the VA OIG declines to accept, the contracting officer shall process requests in accordance with [M842.102-70](#).

M842.803 Disallowing costs after incurrence.

Contracting officers may approve or disapprove contractor's vouchers for payment and if approved, process them through the servicing finance office. Such approval or disapproval must be within the limitations of the contracting officer's warrant and the contract for which the voucher is submitted must be within the contracting officer's delegation of contracting authority.

Subpart M842.12—Novation and Change-of-Name Agreements

M842.1202 Responsibility for executing agreements.

A contracting officer, upon being notified of a successor in interest to a Government contract or change-of-name request from one of its contractors in accordance with [FAR 42.1203](#), shall promptly report such information to the head of the contracting activity (HCA) or designee who will consolidate and forward a notification to the Office of Acquisition and Logistics (OAL), Risk Management and Compliance Service (RMCS).

M842.1203 Processing agreements.

(a) RMCS will designate a cognizant HCA responsible for assigning a contracting officer to take the lead for VA in preparing and executing agreements to recognize a change-of-name or successor in interest. In order to determine the cognizant HCA, RMCS will obtain the list of all awards affected by this novation or change-of-name request. Then RMCS will determine if the agreement is to be processed by VA or another federal agency, based on the contract with the largest unsettled balance. If that is determined to be a VA contract, the HCA over the contracting officer responsible for that contract will be designated the cognizant HCA by RMCS. Then the responsible contracting officer will review the process the novation or change-of-name request per FAR 42.1203.

Subpart M842.15—Contractor Performance Information

M842.1502-70 Agency CPARS policy.

(a) The contracting officer shall serve as the Assessing Official (AO) for all CPARS eligible VA contracts, unless another position / individual is otherwise designated by the respective HCA.

(b) All VA interagency acquisitions shall specify the procuring contracting officer responsible for the acquisition and this individual shall serve as the AO, unless otherwise stated in the specific interagency agreement.

(c) The AO shall prepare a CPARS evaluation in accordance with the thresholds established in [FAR 42.1502](#). See the [CPARS website](#) for further information.

M842.1503-70 Agency CPARS procedures.

(a) The CPARS roles and responsibilities, including CPARS focal points are established in accordance with this subpart and as set forth below. HCAs shall provide further guidance on responsibilities for the roles set forth in paragraphs (1) – (6) below. Key roles in the CPARS evaluation process include:

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(1) The cognizant Program Contract Office/Network Contract Office focal point is designated by each HCA.

(2) The Assessing Official (AO) is the contracting officer unless otherwise designated by the HCA in accordance with [M842.1502-70](#).

(3) The Assessing Official Representative (AOR) is filled by the COR, if applicable.

(4) The contractor representative is designated by the contractor and provided to the focal point and the AO/contracting officer.

(5) The Reviewing Official (RO) is the contracting officer's first line supervisor and serves as the individual who resolves disputes between the parties on assessments. The RO conducts the review at a level above the contracting officer required by [FAR 42.1503\(d\)](#). The ultimate decision on the performance evaluation is made by the contracting agency.

(6) The "organization" responsible and designated to assess in CPARS is the equivalent of a Program Contract Office/Network Contract Office.

(7) Agency Point of Contact (APOC) responsibilities is granted to various levels including Central Office, Service Area Office, and/or Program Contract Office/Network Contract Office for oversight and reporting purposes.

(8) The Department Point of Contact (DPOC) is at the VA HQ level only.

(b) VA focal points shall ensure that all new contract actions are registered and assigned to a contracting officer/assessing official in the system within 30 calendar days of the award date.

(c) Contracting officers/assessing officials shall enter a CPARS evaluation for newly assigned contracts/orders within 120 calendar days following the period of performance. If the potential period of performance of the qualifying contract/order exceeds 12 months, an initial CPARS evaluation shall be prepared upon the completion of the 12 month base period and interim CPARS evaluation reports shall be prepared annually for each subsequent performance period.

(d) The HCA shall—

(1) Establish local policies and procedures, and a training program to ensure procedures for monitoring the timely completion of reports, report integrity, and overall administration of CPARS actions;

(2) Establish an ongoing review program to determine if contracting officials are submitting accurate, timely, and complete past performance evaluations.

(e) Under the direction of the HCA, the CPARS focal point and the AO shall prioritize assessments of contracts and orders that—

(1) Use high-risk vehicles, such as cost-reimbursement or time-and-materials type contracts;

(2) Are complex in nature, such as large software development and implementation, or

(3) Involve high dollar values, regardless of contract type.

(f) Contracting officers are responsible for the following—

(1) Ensuring all COR designation letters include the requirement for the COR to provide input for past performance evaluations, as appropriate; and

(2) Documenting performance issues promptly during the contract period of performance instead of waiting until the end of the performance period when critical details may have been forgotten.

(g) The COR may serve as an AOR at the discretion of the AO. Depending on the complexity of the contract there may be multiple AORs.

(h) The contracting officer shall report all instances of non-responsibility determinations, defective cost and pricing data, terminations for convenience, and terminations for default or cause through the Federal Awardee and Performance Integrity Information System (FAPIIS) (see [FAR 42.1503\(h\)](#)). Note: These actions require review by OGC in accordance with [VAAR part 801](#) and VAAM part M801.

(i) The contracting officer shall ensure that award fee determinations, when required by the contract, are reflected in the contractor's performance.

(j) Provide narratives supported by documentation that is reflective of the assigned rating, and should include the following—

(1) A level of detail and documentation that provides evidence and justifies a basis for the assigned rating;

(2) An explanation of how problems were resolved and the extent to which solutions were effective;

(3) Objective, fact based statements, and examples of the contractor's impact on improving or hindering Government performance; and

(4) If a subcontracting plan is required, an assessment of the contractor's performance against, and efforts to achieve, the goals identified in the small business subcontracting plan.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART M843—CONTRACT MODIFICATIONS

Subpart M843.1—General

Sec.	
M843.101	Definitions.
M843.102	Policy.
M843.102-70	Contract scope considerations.
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Subpart M843.70—VA Modification Procedures

M843.7000	Special procedures for price negotiation in construction contract modifications.
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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M843—CONTRACT MODIFICATIONS

Subpart M843.1—General

M843.101 Definitions.

As used in this part—

Consideration means something of value one party exchanges with another party, to induce the parties to form a mutual contractual commitment. It may take many forms, including monetary increases or decreases, changes in specifications or work statements, delivery schedules, payment time frames, or other contract terms and conditions.

Stop-Work Order means a suspension of work or work stoppage. When required, a stop work order should be issued immediately. Orders may take the form of either a letter or modification. Contracting officers may issue stop work orders for a period of 90 days or less. Orders greater than 90 days must be agreed to by the contractor.

M843.102 Policy.

M843.102-70 Contract scope considerations.

(a) Scope determinations are not required for administrative changes ([FAR 43.101](#)) issued as modifications that do not impact the substantive rights of the parties (e.g., a change in the paying office or the appropriation data) or unilateral modifications that are authorized by clauses other than the changes clause (e.g., Property clause, Options clause, or Suspension of Work clause ([FAR 43.103\(b\)\(3\)](#))).

(b) The contracting officer's scope determination shall be documented as a memorandum for the record (MFR). The MFR, at a minimum, shall document the following:

(1) Nature of work to be performed under the modification compared to the nature of the work performed under existing contract, delivery order or task order;

(2) Amount of effort required to perform the work required by the modification compared to the amount of effort required to perform the existing contract, delivery order or task order;

(3) Changes in quantity or quality of deliverables which exceed what offerors who proposed on the existing contract, delivery order or task order should have reasonably contemplated;

(4) Scope of the original competition and whether offerors who proposed on the existing contract, delivery order or task order should have reasonably contemplated the proposed modification;

(5) Cumulative impact of multiple changes/previous modifications; and

(6) Changes in time of performance.

(7) General Counsel written opinion, if sought, as to whether the proposed modification is within scope of the basic contract, delivery order or task order.

(8) Technical expert analysis as to whether the proposed modification is within scope of the basic contract, delivery order or task order.

(c) In-scope changes to an existing contract shall be issued in accordance with [FAR subpart 43.2](#).

(d) When a proposed change requires a modification outside of the general scope of a contract, the contracting officer must—

(1) Issue a modification in accordance with the non-competitive procedures at [FAR 6.303](#), [FAR 8.405-6](#), or [FAR 16.505\(b\)\(2\)](#);

(2) Conduct market research to determine whether an award to a Vendor Information Page (VIP) verified Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) firm in accordance with VAAR subpart 819.70 is feasible; and

(3) If market research reveals that two or more VIP verified SDVOSB or VOSB firms are not available, competitively solicit the requirement.

M843.102-71 Execution of modifications by VA contracting officers.

(a) General. This subsection does not apply to commercial items unless authorized at a level above the contracting officer.

(1) Bilateral modifications shall not be signed by the government prior to obtaining the contractor's signature signifying acceptance of the additional requirements. If the contractor places conditions on the modification, a written reply shall immediately be sent to the contractor stating that the government will not execute the modification as returned and will reopen negotiations.

(2) All supplemental agreements shall include the "Contractor's Statement of Release" in accordance with [FAR 43.204\(c\)\(2\)](#) unless waived by the head of the contracting activity (HCA).

(3) Approval one level above the contracting officer is required when the price of a modification will exceed the original contract price or when the sum of the modifications issued to date, together with the one proposed, exceeds the original contract price.

(4) A government estimate is not required for contract modifications less than \$150,000. However, regardless of the absence of a government estimate, a determination of price reasonableness shall still be made in accordance with [FAR 15.404-1\(c\)\(iv\)](#).

(5) All modifications must include language similar to either an adjustment of the contract completion date or to: "Extension of contract completion date is not required by reason of this modification."

(6) When a liquidated damages clause is included in the contract, a unilateral modification shall be prepared to adjust the contract price for any liquidated damages assessed against the contractor prior to final payment and contract close-out.

(b) Service contracts.

(1) If labor requirements subject to Service Contract Labor Standards (the Service Contract Act of 1965) are affected by out-of-scope work, a new Service Contract Labor Standards wage determination must be requested and made a part of the modification.

(2) A unilateral modification shall be issued to adjust the contract price to reflect deductions taken for unperformed work.

Subpart M843.2—Change Orders

M843.201-70 Policy.

(a) It is VA policy to negotiate in advance the cost and/or time associated with all contract changes except in unusual circumstances where it is not possible as a consequence of the character of the changed work. The contracting officer is generally in a better negotiating position when the in-scope change is negotiated and the contract modified prior to the work starting.

(b) When the government and contractor cannot reach agreement on the cost and time associated with changed or additional work, an unpriced change order shall be issued to direct the contractor to proceed with the work despite the absence of an agreement on appropriate compensation. In such circumstances, the unpriced change order shall contain compensation, both in terms of time and money to the contract, in amounts or durations thought to be reasonable by the contracting officer in accordance with 843.2. Further, these amounts or durations shall be broken down in sufficient detail to clearly document the basis for the contracting officer's determination of what was

reasonable compensation should the contractor seek additional compensation via the disputes provision of the contract and prevail in a contracting officer's final decision.

M843.202-70 VA authority to issue change orders.

Within the VA, Senior/Resident Engineers may be authorized to perform and execute limited duties and responsibilities for construction contracts when VAAR clause 852.242-70 and its Alternate I have been included in the contract terms and conditions. However, Alternate I shall not be included when the Senior/Resident Engineer has been assigned duties as the Contracting Officer Representative.

M843.204-70 Definitization of unpriced change orders.

(b) Price ceiling. The unpriced change order (UCO) will include a cost/price ceiling not to exceed 50 percent of the not-to-exceed price before definitization or 75 percent as established by VAAR 843.204-70-4. The rationale for the not-to-exceed price will be documented and retained in the Electronic Contract Management System. Examples of such supporting rationale include—

- (1) The Independent Government Cost Estimate;
- (2) Price analysis based on prior buys; and
- (3) The contractor's proposal.

(g) Allowable profit. To improve the documentation and provide guidance on determining the profit for UCOs with substantial incurred cost, contracting officers shall follow the mandatory instructions for [weighted guidelines method](#) analysis.

M843.204-71 Unpriced contract modification language.

(a) When an equitable adjustment in the contract price or delivery terms or both cannot be agreed upon in advance, an unpriced modification may be issued. Include in the unpriced change order, wording similar to the following:

“You are hereby directed to perform the work in the attached [insert either statement of work or statement of objectives] date [insert date]. The price of the work shall be performed with the “Not-to-Exceed (NTE) amount of \$[insert dollar amount].”

DEFINITIZATION SCHEDULE

As agreed to between the government and the contractor, the following definitization schedule is hereby established:

Proposal Due Date:

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Negotiation Date:
Definitization Target Date:

The final change in the contract amount and time will be determined pursuant to negotiations and incorporated upon definitization.”

(b) Upon successful negotiation of an equitable adjustment resulting from an unpriced change order, the contracting officer shall issue a supplemental agreement. Include in the modification wording similar to the following:

“This modification hereby definitizes Modification [*insert number and, if applicable, task order number*] dated [*insert date*] issued with a Not-to-Exceed (NTE) amount of \$[*insert dollars*].

As negotiated on [*insert date*] and in accordance with the attached [*insert statement of work or statement of objectives*] dated [*insert date*], the parties hereby mutually agree to the following adjustments in the [*insert either “contract” or “task order”*] price [*and time”, insert if applicable*] as complete and equitable adjustment.

CLIN	DESCRIPTION	AMOUNT
0001	[<i>Add description of added work</i>]	\$[<i>insert dollar amount</i>]
	Less amount awarded on unpriced change order [<i>insert Mod # and, if applicable, “Task Order No.”</i>]	\$[<i>insert dollar amount</i>]
	TOTAL AWARDED THIS ACTION	\$[<i>insert balance due</i>]

As a result of the above, the total amount of the [*insert either “contract” or “task order”*] is changed from \$[*insert total value before this change*] to \$[*insert total value before this change plus the amount funded in this change*], a [*insert either “increase” or “decrease”*] of \$[*insert the difference between the values*]. [*If applicable, add “The contract completion date is changed from [insert date] to [insert date]*]. All other terms remain the same.

CONTRACTOR’S STATEMENT OF RELEASE

In consideration of the modification(s) agreed to herein as complete and equitable adjustment for the Contractor’s [*describe _____*] “proposal(s) for adjustment”, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the “proposal(s) for adjustment” [*except for _____*].”

(c) If the contractor fails to submit a proposal in accordance with the definitization schedule, the contracting officer shall either issue a settlement by determination agreement or obtain a waiver from the HCA to extend the schedule.

Subpart M843.70—VA Modification Procedures

M843.7000 Special procedures for price negotiation in construction contract modifications.

(a) In view of the erratic and often unpredictable nature of overhead rates in the construction industry, a standard or flat rate should not be used. An exception is a situation in which dollar value of the work is too low (typically less than \$500,000) to warrant the preparation of an itemized estimate of job overhead costs. In such cases, the following “Alternate” method recognized by the construction industry may be used:

(1) 10% for field overhead (FOH) on prime contractor’s work (direct cost of modification x 10%= FO cost for modification)

(2) 3% for home office overhead (HOOH) on prime contractor’s work (direct cost of modification + FOH cost for modification) x 3% = HOOH cost for modification

(3) 5% for prime contractor’s overhead on subcontracted work. Contracting officers are cautioned to use judgement in extreme situations where such compensation may be out of proportion to the contractor’s actual overhead costs. An example of this would be the purchase and installation of a very expensive piece of equipment where the installation is relatively simple and the application of standard percentages would over compensate the contractor.

(b) [FAR 15.404-4\(b\)\(1\)\(i\)](#) requires agencies to use a structured approach for determining profit or fee in acquisitions that require cost analysis. M815.404-4 encourages VA contracting officers to use the DoD Weighted Guidelines tool. Contract modifications for the same type and mix of work as the basic contract and of relatively small dollar value compared to the total contract value, may be negotiated using the basic contract profit/fee rate.

(c) Contract modification negotiations shall include all associated time extensions. Contractor proposals shall include all costs and time associated with the change. When agreement on time is at an impasse, the contracting officer shall make a determination of reasonable adjustment based on the government estimate and include a time extension in the modification. However, delays due to weather do not necessarily result in contractor entitlement to an excusable non-compensable time extension under the Default clause. Weather related time extensions are only awarded if the actual weather is in fact unusually severe (i.e., weather more severe than anticipated for the season or location involved) or adverse (i.e., atmospheric conditions at a definite time and place that are unfavorable to construction activities) and impacts the progress of activities on the longest path. It is irrelevant if the contractor is ahead of schedule or behind schedule

when unusually severe weather delays are experienced. If future weather dependent activities on the longest path are pushed into months with more anticipated adverse weather, consideration should be given to granting additional time. Conversely, if they are pushed into months with less anticipated adverse weather, consideration should be given to granting less time. See the Office of Construction and Facilities Management's [General Time Extension Analysis Procedures – Contract Change Time Delay to the Project Schedule](#) - for time extension procedures.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart M844.3—Contractors' Purchasing Systems Reviews

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M844.302	Requirements.
M844.370	Types of contractor purchasing system reviews.
M844.370-1	Initial/comprehensive review.
M844.370-2	Special review.
M844.370-3	Follow-up review.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart M844.3—Contractors' Purchasing Systems Reviews

M844.302 Requirements.

(c) In advance of contractor purchasing system reviews, contracting officers may inform subject contractors of the elements set forth in M844.370-1.

M844.370 Types of contractor purchasing system reviews.

M844.370-1 Initial/comprehensive review.

An initial review is a complete, first-time analysis of a contractor's purchasing system. A comprehensive review is performed if a contractor has an approved purchasing system. Both the initial and comprehensive contractor purchasing system review (CPSR) evaluates the contractor's compliance with the same elements. At a minimum, the contractor's purchasing system shall:

(a) Have an adequate system description including policies, procedures, and purchasing practices that comply with the [Federal Acquisition Regulation](#) (FAR) and the [Department of Veterans Affairs Acquisition Regulation](#) (VAAR);

(b) Ensure that all applicable purchase orders and subcontracts contain all flow down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(c) Maintain an organization plan that establishes clear lines of authority and responsibility;

(d) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the purchase order and subcontract files which are subject to Government review;

(e) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(f) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(g) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

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- (h) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (i) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (j) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier purchase orders or quote to ensure fair and reasonable subcontract prices;
- (k) Document negotiations in accordance with [FAR 15.406-3](#);
- (l) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (m) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (n) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (o) Document and justify reasons for subcontract changes that affect cost or price;
- (p) Notify the Government of the award of all subcontracts that contain flow down clauses allowing for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (q) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;
- (r) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- (s) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow down clauses, as required by the [FAR](#) and [VAAR](#), including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
- (t) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;

(u) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

(v) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(w) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(x) Establish and maintain procedures to timely notify the contracting officer, in writing, if—

(1) The contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

M844.370-2 Special review.

A special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or comprehensive review. The contracting officer may initiate a special review of any contractor's purchasing system in connection with weaknesses revealed as a result of:

(a) The initial or comprehensive review, or continuing in-depth surveillance;

(b) The review of subcontracts submitted under the notification and consent to subcontract requirement of contract clauses;

(c) Major changes in the contractor's purchasing policies, procedures, or key personnel;

(d) Changes in plant workload or type or work;

(e) Information that changes the level of risk to the Government; or

(f) Award of a high dollar value contract to a vendor that has had no review of their system.

M844.370-3 Follow-up review.

A follow-up review is performed when a contractor's purchasing system is disapproved by the contracting officer. The purpose of the follow-up review is to determine whether a contractor has effectively implemented a corrective action plan (CAP) deemed adequate by the contracting officer and corrected the deficiencies revealed by any purchasing system review. The same techniques used during an initial or comprehensive review are employed in the follow-up review. If the status of a contractor's purchasing system is disapproved, a follow-up review shall be made as soon as:

(a) Notification has been received from the contractor that all deficiencies have been corrected. The notification shall consist of a letter from the contractor giving the date of completion of the CAP; and

(b) Sufficient time has passed to provide a suitable sample to be reviewed. Sufficient time is approximately 90 days after all elements of the CAP have been implemented. A follow-up review is confined to the areas found deficient in the previous CPSR. A follow-up report will only be completed if the previous CPSR was completed within the past 18 months. If it has been more than 18 months since the previous CPSR, then a full comprehensive review will be done on the contractor.

SUBCHAPTER G—CONTRACT MANAGEMENT PART

M845—GOVERNMENT PROPERTY

Subpart M845.1—General

Sec.

M845.101	Definitions.
M845.102	Policy.
M845.102-70	Accountability of Government property.
M845.103	General.
M845.103-70	Property administrator.
M845.103-71	Furnishing Government property to contractors.
M845.105	Contractors' property management system compliance.
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Subpart M845.4—Title to Government Property

M845.402	Title to contractor-acquired property.
M845.402-70	Policy.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M845—GOVERNMENT PROPERTY

Subpart M845.1—General

M845.101 Definitions.

Significant deficiency means a shortcoming in a contractor's property management system that materially affects the ability of VA officials to rely upon information produced by the system that is needed for management purposes.

M845.102 Policy.

(b) Prior to furnishing Government property to the contractor, the contracting officer shall ensure that each of the requirements of [FAR 45.102](#) are addressed as follows, and documented in the eCMS contract file—

(1) In the Government's best interest. Discussion of the need for Government property should be specific, factual, and where necessary, address actual or projected dollars and percentages. The discussion should address the following factors, as appropriate:

(i) Economy—Furnishing Government property is the lowest evaluated cost or price alternative.

(ii) Standardization—There is a critical need for precise replication.

(iii) Security—Government property is needed due to security issues/concerns.

(iv) Need to expedite production—Government property is crucial to achieving timely or accelerated delivery of a supply item or service, including construction.

(v) Scarcity—The Government can obtain scarce items, or is the only source of property necessary for successful execution of a contract.

(vi) Contract type—Government property will enable the Government to obtain a more favorable contract type.

(2) Overall benefit. Demonstrate that the overall benefit to the acquisition significantly outweighs the increased cost of administration, including property disposal.

(i) Property in the hands of contractors drives program costs. Therefore, in order to make the case that providing Government property to the contractor is worthwhile, the associated costs must be considered and the business decision justified. The costs of Government property removal and disposal, including disposal of environmentally-regulated property, must be included.

(ii) Costs must be either less than what the contractor might otherwise incur, or the demonstrated benefit to the Government must outweigh these additional contract costs.

(3) Government assumption of risk. Demonstrate that providing the property does not substantially increase the Government's risk.

(i) Risk must be discussed and documented. A risk analysis is warranted to demonstrate that the Government is not substantially increasing its risk. For example, when furnishing Government property, the Government is ordinarily responsible for suitability of use, timely delivery, and replacement of defective Government property.

(ii) Other risks may need to be considered, discussed, and documented.

(4) Government requirements cannot otherwise be met. Document why the furnishing of Government property is critical and significant to meeting the acquisition's objectives.

M845.102-70 Accountability of Government property.

Government property, as defined at [FAR 45.101](#), must be contractually accountable to a single contract and only one contract at a time. This requirement applies to both Government-furnished property and contractor-acquired property. Although accountable to only one contract at a time, contract terms and conditions may allow Government property to be used on other contracts (see [FAR 52.245-9](#), Use and Charges).

M845.103 General.

M845.103-70 Property administrator.

The property administrator function is generally delegated by the contracting officer to the contracting officer representative.

M845.103-71 Furnishing Government property to contractors.

The requiring office (project or program manager, or purchase request generator), as part of its responsibility for acquisition planning ([FAR part 7](#), Acquisition Planning), is the decision point as to whether or not to furnish property to contractors. The basis for any decision to provide Government property shall be documented by the requiring office and provided to the contracting officer. Such documentation is not required when contractors are furnished property for repair, maintenance, modification, or overhaul under a contract.

M845.105 Contractors' property management system compliance.

(b) Disposition of findings.

(1) Initial determination:

(i) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(ii) Evaluation of contractor's response. Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the property administrator, should evaluate the contractor's response and make a final determination.

(2) Final determination:

(i) Monitoring contractor's corrective action. The contracting officer and property administrator shall monitor the contractor's progress in correcting deficiencies.

(ii) Correction of significant deficiencies.

(A) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the property administrator to review the correction to determine if the deficiencies have been resolved.

(B) The contracting officer shall determine if the contractor has corrected the deficiencies.

(C) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the property administrator.

(c) If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are—

(1) Withdrawing or withholding approval of the system;

(2) Bringing the issue to the attention of higher level management;

(3) Considering the property control deficiencies in determining contractor's responsibility (see [FAR 9.104-1\(e\)](#)); and

(4) Documenting the deficiencies in the Contractor Performance Assessment Reporting System (CPARS).

M845.106-70 Transferring Government property accountability.

(a) Use only the Standard Form 30 to execute transfers of Government property accountability between existing contracts. No other forms or documents are authorized for the transfer of Government property accountability from one contract to another.

(b) Modifications for the transfer of Government property accountability shall

incorporate [FAR clause 52.245-1](#), Government Property, if the gaining contract lacks this clause.

Subpart M845.4—Title to Government Property

M845.402 Title to contractor-acquired property.

M845.402-70 Policy.

Oversight and visibility of contractor acquired property should be limited to reviews and audits of contractor accounting and property management systems. Ad-hoc contractor generated reports of contractor-acquired property used by government personnel for property accountability can result in duplicate accountability records, inefficient operations, and increased program costs, and are discouraged.

SUBCHAPTER G—CONTRACT MANAGEMENT PART

M845—GOVERNMENT PROPERTY

Subpart M845.1—General

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Subpart M845.4—Title to Government Property

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M845—GOVERNMENT PROPERTY

Subpart M845.1—General

M845.101 Definitions.

Significant deficiency means a shortcoming in a contractor's property management system that materially affects the ability of VA officials to rely upon information produced by the system that is needed for management purposes.

M845.102 Policy.

(b) Prior to furnishing Government property to the contractor, the contracting officer shall ensure that each of the requirements of [FAR 45.102](#) are addressed as follows, and documented in the eCMS contract file—

(1) In the Government's best interest. Discussion of the need for Government property should be specific, factual, and where necessary, address actual or projected dollars and percentages. The discussion should address the following factors, as appropriate:

(i) Economy—Furnishing Government property is the lowest evaluated cost or price alternative.

(ii) Standardization—There is a critical need for precise replication.

(iii) Security—Government property is needed due to security issues/concerns.

(iv) Need to expedite production—Government property is crucial to achieving timely or accelerated delivery of a supply item or service, including construction.

(v) Scarcity—The Government can obtain scarce items, or is the only source of property necessary for successful execution of a contract.

(vi) Contract type—Government property will enable the Government to obtain a more favorable contract type.

(2) Overall benefit. Demonstrate that the overall benefit to the acquisition significantly outweighs the increased cost of administration, including property disposal.

(i) Property in the hands of contractors drives program costs. Therefore, in order to make the case that providing Government property to the contractor is worthwhile, the associated costs must be considered and the business decision justified. The costs of Government property removal and disposal, including disposal of environmentally-regulated property, must be included.

(ii) Costs must be either less than what the contractor might otherwise incur, or the demonstrated benefit to the Government must outweigh these additional contract costs.

(3) Government assumption of risk. Demonstrate that providing the property does not substantially increase the Government's risk.

(i) Risk must be discussed and documented. A risk analysis is warranted to demonstrate that the Government is not substantially increasing its risk. For example, when furnishing Government property, the Government is ordinarily responsible for suitability of use, timely delivery, and replacement of defective Government property.

(ii) Other risks may need to be considered, discussed, and documented.

(4) Government requirements cannot otherwise be met. Document why the furnishing of Government property is critical and significant to meeting the acquisition's objectives.

M845.102-70 Accountability of Government property.

Government property, as defined at [FAR 45.101](#), must be contractually accountable to a single contract and only one contract at a time. This requirement applies to both Government-furnished property and contractor-acquired property. Although accountable to only one contract at a time, contract terms and conditions may allow Government property to be used on other contracts (see [FAR 52.245-9](#), Use and Charges).

M845.103 General.

M845.103-70 Property administrator.

The property administrator function is generally delegated by the contracting officer to the contracting officer representative.

M845.103-71 Furnishing Government property to contractors.

The requiring office (project or program manager, or purchase request generator), as part of its responsibility for acquisition planning ([FAR part 7](#), Acquisition Planning), is the decision point as to whether or not to furnish property to contractors. The basis for any decision to provide Government property shall be documented by the requiring office and provided to the contracting officer. Such documentation is not required when contractors are furnished property for repair, maintenance, modification, or overhaul under a contract.

M845.105 Contractors' property management system compliance.

(b) Disposition of findings.

(1) Initial determination:

(i) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(ii) Evaluation of contractor's response. Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the property administrator, should evaluate the contractor's response and make a final determination.

(2) Final determination:

(i) Monitoring contractor's corrective action. The contracting officer and property administrator shall monitor the contractor's progress in correcting deficiencies.

(ii) Correction of significant deficiencies.

(A) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the property administrator to review the correction to determine if the deficiencies have been resolved.

(B) The contracting officer shall determine if the contractor has corrected the deficiencies.

(C) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the property administrator.

(c) If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are—

(1) Withdrawing or withholding approval of the system;

(2) Bringing the issue to the attention of higher level management;

(3) Considering the property control deficiencies in determining contractor's responsibility (see [FAR 9.104-1\(e\)](#)); and

(4) Documenting the deficiencies in the Contractor Performance Assessment Reporting System (CPARS).

M845.106-70 Transferring Government property accountability.

(a) Use only the Standard Form 30 to execute transfers of Government property accountability between existing contracts. No other forms or documents are authorized for the transfer of Government property accountability from one contract to another.

(b) Modifications for the transfer of Government property accountability shall

incorporate [FAR clause 52.245-1](#), Government Property, if the gaining contract lacks this clause.

Subpart M845.4—Title to Government Property

M845.402 Title to contractor-acquired property.

M845.402-70 Policy.

Oversight and visibility of contractor acquired property should be limited to reviews and audits of contractor accounting and property management systems. Ad-hoc contractor generated reports of contractor-acquired property used by government personnel for property accountability can result in duplicate accountability records, inefficient operations, and increased program costs, and are discouraged.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART M846—QUALITY ASSURANCE

Subpart M846.1—General

Sec.
M846.101-70 Definitions.
M846.102 Policy.

Subpart M846.2—Contract Quality Requirements

M846.202-470 VA higher-level contract quality requirements.

Subpart M846.4—Government Contract Quality Assurance

M846.401 General.
M846.401-70 VA Quality Assurance Surveillance Plan (QASP).
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M846.407-70 Nonconforming supplies or services—no other contractual remedies.
M846.407-71 Recall of defective medical devices and medical products, including food and food products.

Subpart M846.6—Material Inspection and Receiving Reports

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M846—QUALITY ASSURANCE

Subpart M846.1—General

M846.101-70 Definitions.

As used in this part—

At no additional cost to the Government means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (see [FAR 46.707](#)), or at no increase in fee under cost-reimbursement contracts.

Defect means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Subsistence means food products, purchased from approved and/or mandatory sources, for the provision of meals to the Veteran beneficiary.

M846.102 Policy.

This part sets forth the VA's requirements for performance of Government contract quality assurance functions as required by [FAR part 46](#), [FAR part 12](#), and VAAR part 846. The purpose of Government contract quality assurance is to ensure that supplies and services acquired under VA contracts conform to contract requirements.

Subpart M846.2—Contract Quality Requirements

M846.202-470 VA higher-level contract quality requirements.

(a) Nutrition and Food Services (NFS) is responsible for the identification and purchasing of all subsistence items and food service supplies needed for patient and resident food services. All products are to be purchased in accordance with the Subsistence Prime Vendor (SPV) contract, and other authorized procurement sources, when appropriate. (See VHA Handbook 1109.04, [Food Services Management Program](#), dated October 11, 2013 and VHA Directive 1761(1), Supply Chain Program Management, Appendix A, paragraph 4, Requirements for Nutrition and Food Service Exception.)

(b) In accordance with the VA Procurement and Logistics Office (10NA2) and VHA Directive 1761(1), Supply Chain Program Management, Appendix A, paragraph 4, Requirements for Nutrition and Food Service Exception, subsistence items are

determined and fulfilled through the proprietary software provided by the Subsistence Prime Vendor Contractor used by all VA medical facilities.

(c) To promote and achieve cost effectiveness in food and food service supply procurement, national subsistence and/or supply standardization agreements have been established for selected product categories. Examples of these categories are: frozen entrees, canned soups, cookies, crackers, meats, coffee, ware-washing chemicals, paper and plastic products, etc. Any facility wanting to deviate from the standardized agreements must submit a waiver to the VHA Logistics Office for authorization to purchase from a non-mandatory source.

(d) Any new food and/or convenience products, not covered under the standardized agreements, need to be evaluated prior to being added to the patient menu. Products need to be evaluated for quality, variety, flavor or taste, nutritional content, and cost. A form, such as VA Form 10-7983, Sensory Evaluation of Convenience Foods (see <http://vaww.va.gov/vaforms/medical/pdf/10-7983-fill.pdf>), may be used as an evaluation tool to screen foods for acceptability. Whenever possible, patient and/or resident participation in sensory evaluation of products needs to be utilized. Increased portion cost needs to be justified by increased quality, decreased waste, and reduced labor expenditure. A nutritional analysis must be provided from the vendor on convenience products and reviewed for menu or dietary compliance. (e) Quality standards consists of--

(1) All juices and dairy products, regardless of packaging, including apple and orange juice, apple cider, milk, ice cream, processed cheese (American cheese), and liquid, frozen, and dry eggs and egg products need to be pasteurized.

(2) Only pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs, or egg products are to be used.

(3) Fluid and dry milk, and milk products, including those used in cooking, must comply with Grade A pasteurized standards and be procured pasteurized. Milk must be procured in machine-filled and sealed containers of appropriate capacity for daily needs, but should not exceed 19 liter (5 gallon) containers.

(4) Meat, poultry, and seafood must be purchased in accordance with the facility *Hazard Analysis Critical Control Point (HACCP)* plan which is a systematic approach to the identification, evaluation, and control of food safety hazards. Seafood and poultry need to be purchased frozen. Meat (beef and pork) may be purchased chilled, within the proper HACCP temperature ranges, and securely sealed to prevent contamination.

(5) Commercially-produced bread rolls, and baked goods from local bakeries are purchased in accordance with required specifications. Bread used for tray service is commercially wrapped or protected from contamination and dehydration through the use of food grade plastic bags or other protective covering.

(6) Ice cream, frozen yogurt, sherbet and non-frozen yogurt are purchased in accordance with required specifications.

(7) Food purchased in hermetically-sealed containers must be obtained from a food processing plant that meets local, state and federal regulations.

Subpart M846.4—Government Contract Quality Assurance

M846.401 General.

M846.401-70 VA Quality Assurance Surveillance Plan (QASP).

(a) The requirement for a quality assurance surveillance plan (QASP) shall be addressed and documented in the contract file for each contract. Those awarded at or below the simplified acquisition threshold do not require a QASP.

(1) For contracts for services, the contracting officer should prepare a QASP to facilitate assessment of contractor performance.

(2) [FAR 46.401\(a\)](#) provides the components that should be contained in a QASP. Numerous QASP templates are available to facilitate the development of a QASP. Samples of some QASP templates are:

[E-Quality Assurance Surveillance Plan](#)
[Quality Assurance Surveillance Plan](#)

(b) The QASP shall be entered into the contract file.

M846.401-71 Health Care Resources (HCR) quality assurance and performance monitoring policy.

(a) All care provided under a HCR contracts must meet VA's quality standards of care, whether the care is provided in a VA facility or in the sharing partner's facility ([VA Directive 1663](#), Health Care Resources Contracting –Buying, Title 38 U.S.C. 8153, May 10, 2018).

(b) When awarding and administering contracts for health care resources, contracting officers shall adhere to the guidance found in [VA Directive 1663](#), Health Care Resources Contracting–Buying Title 38 U.S.C. 8153, dated May 10, 2018, and the Veterans Health Administration Procurement Manual, where applicable.

(c) Contracting officers shall—

(1) Ensure appropriate quality assurance standards are included in all HCR solicitations and that they contain a detailed description of the monitoring procedures used by the VA to validate contract compliance. These procedures must be able to demonstrate through time and attendance logs, operating room records, minutes of

meetings or other appropriate electronic records, that VA has received the required contract services.

(2) Ensure that performance under a sharing agreement is monitored;

(3) Appoint a contracting officer representative (COR) for each HCR contract to monitor compliance with the terms of the contract.

(4) Include the title of the VA official(s) to be designated as the Contracting Officer's Representative (COR).

(5) Prior to the exercise of any option or option year, require the COR to provide the annual summary evaluation of contractor performance to the contracting officer for review and consideration prior to the actual exercise of any option.

(d) The COR shall—

(1) Immediately notify and forward all monitoring procedures detailing any incidents of contractor noncompliance to the contracting officer; and

(2) Annually forward the summary evaluation of the contractor performance to the contracting officer prior to the contracting officer exercising any option or option years.

M846.407-70 Nonconforming supplies or services—no other contractual remedies.

In addition to [FAR 46.407\(f\)](#), if nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer shall—

(a) Notify the contractor in writing of the nonconforming material or service;

(b) Request that the contractor repair or replace the material, or per the service, at no cost to the Government; and

(c) May accept consideration of a refund if offered.

M846.407-71 Recall of defective medical devices and medical products, including food and food products.

(a) The Veterans Health Administration ([VHA Directive 1068](#), Recall of Defective Medical Devices and Medical Products, Including Food and Food Products, dated July 22, 2014, establishes policy for recalls involving medical devices, medical products, foods and food products.

(1) All product recalls received by the SPV contractor from manufacturers, United States Department of Agriculture (USDA), or the FDA that involve products

delivered to a VA medical facility, must be communicated to the involved medical facilities within 24 hours of notification receipt from the source. The recalled items must be handled according to the guidelines provided by the SPV contractor. If specific procedures are not indicated, segregate and mark the product by indicating it should not be used, and return identified products (or destroy, if designated) as soon as possible to the SPV contractor for proper credit or replacement. Foods to be disposed of because of a FDA or Food Safety and Inspection Service recall will be disposed of in accordance with FDA and Centers for Disease Control and Prevention (CDC) guidelines. Any product that is on a recall list should be disposed of in a safe manner to prevent infections in humans or animals. (FDA recall Web site is located at: <http://www.fda.gov/Safety/Recalls/default.htm>. The USDA recall Web site is located at: <http://www.fsis.usda.gov/Home/index.asp>). Food recalls received from the National Center for Patient Safety (NCPS) will be responded to per VISN policy.

(2) All contracts administered by either the National Acquisition Center (NAC) or Strategic Acquisition Center (SAC) (e.g., national, Blanket Purchase Agreements, Federal Supply Schedules) have standardized language in purchase orders and contracts requiring vendors to notify the appropriate NAC or SAC contracting officers and VA's Product Recall Office (PRO) of any actions required by the field regarding their products (e.g., recalls - voluntary or otherwise, manufacturer field actions) or other product safety issues. Additionally, the PRO is to be contacted within 1 business day following receipt of product safety or other relevant information from the vendor (see VHA Directive 1068).

(b) The Network Contract Office (NCO) Contracting Officer is responsible for—

(1) Ensuring that all contracts and purchase orders administered by the VISN and its medical facility(ies) include standard language requiring vendors to notify the Contracting Officer, the facility(ies), and the PRO of any actions required on medical devices and medical products related to recalls (voluntary or otherwise), manufacturer field actions, or other product safety issues. Additionally, the PRO is to be contacted within 1 business day following receipt of product safety or other relevant information from the vendor; and

(2) Notifying the Facility Recall Coordinator (FRC) of recalls or important product safety issues received from facility-initiated contract vendors.

Subpart M846.6—Material Inspection and Receiving Reports

M846.601-70 Subsistence and supplies receiving.

The contracting officer should ensure subsistence items are received and inspected in accordance with the terms and conditions of the SPV contract and local [Hazard Analysis Critical Control Point \(HACCP\)](#) guidelines.

Subpart M846.7—Warranties

M846.702-70 Guarantee period of services and specifications.

(a) This section applies to the use of guarantee period services specifications in construction contracts that include contractor-furnished and contractor-installed equipment. Certain complex, contractor-installed, high-dollar value, traditionally troublesome equipment, such as elevators and communication systems, do not always function as expected after the initial guaranty has expired; therefore, [guarantee period services specifications](#) were developed to assist contracting officers in the administration of construction contracts with new long-term equipment guaranties.

(b) Guarantee period services are appropriate when—

(1) There are critical maintenance activities that are clearly beyond the skills and training of current Government personnel; and

(2) When it is evident that the service would substantially extend the life expectancy of the equipment.

(c) Guarantee period services are not appropriate for the following situations:

(1) Augment Government maintenance work forces or in situations where Government personnel can obtain adequate maintenance training through operating manuals and orientation.

(2) Minor extensions or expansions of existing systems.

(d) Due to the novel nature of guarantee period services and specifications, the contracting officer shall—

(1) Inform prospective bidders, which may be accomplished in blocks 10 and 11 of SF 1442 (Solicitation, Offer and Award (Construction, Alternation or Repair)) of the contract time frames, both for the construction portion and for the guarantee period services portion of the contract;

(2) Obtain legal and technical review, regardless of dollar value, prior to the issuance of a solicitation;

(3) Include all applicable FAR and VAAR parts such as FAR/VAAR part 32/832, Contract Financing; part 36/836; Construction and Architect-Engineer Contracts; part 46/846, Quality Assurance; parts 37/837, Service Contracting Clauses and applicable wage determination requirements; [FAR clause 52.228-15](#), Performance and Payment Bonds—Construction; and applicable wage determination in all solicitations since they apply to the guarantee period services portion of the contract;

(4) Ensure the appropriate VAAR payment clauses, e.g., 852.232-70, Payments

Under Fixed-Price Construction Contracts (Without NAS-CPM) (Alternate I), and 852.232-71, Payments Under Fixed-Price Construction Contracts (Including NAS-CPM) (Alternate I), are included in all solicitations and contracts that contain guarantee period services provisions as delineated at 832.111-70, VA contract clauses for non-commercial purchases;

(5) Establish separate contract line item numbers (CLINS) to reflect the various tasks to be performed;

(6) Ensure the solicitation includes a specific separate guarantee requirement for the covered equipment that extends to the full period of the guarantee period services;

(7) Ensure that the guarantee services and specifications are included in the original contract scope since existing contracts cannot not be modified to include these specifications because the determination required by VAAR 846.702-70(c) cannot be made after contract award;

(8) Ensure the solicitation states that Guarantee Period Services are not bid alternates; and

(9) The contracting officer may determine, when in the best interest of VA, that guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and to ensure that the equipment performs as guaranteed.

M846.703 Criteria for use of warranties.

The contracting officer must ensure that the procurement request initiator prepares a written recommendation that can be evaluated for those purchases deemed appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in [FAR 46.703](#). The recommendation shall also identify the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply.

M846.704 Authority for use of warranties.

As prescribed by FAR 46.704, the contracting officer is authorized to approve the use of warranties.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M847—TRANSPORTATION

Subpart M847.1—General

Sec.
M847.105 Transportation assistance.

Subpart M847.3—Transportation in Supply Contracts

M847.303 Standard delivery terms and contract clauses
M847.303-1 F.o.b. origin.
M847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on
the invoice.
M847.306 Transportation factors in the evaluation of offers.
M847.306-70 Utilization of environmental transportation evaluation factors.
M847.306-71 Mandatory environmental transportation factors.
M847.306-72 Optional environmental transportation factors.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M847—TRANSPORTATION

Subpart M847.1—General

M847.105 Transportation assistance

Contracting officers shall contact their Traffic Manager, or COR, for assistance and expertise in transportation management, and transportation related issues.

Subpart M847.3—Transportation in Supply Contracts

M847.303 Standard delivery terms and contract clauses.

M847.303-1 F.o.b. origin.

Shipments falling within this category must be shipped on a bill of lading, except as provided in 41 CFR 102-118.40 (i.e. where government payment mechanisms are not available or acceptable). Contracting officers must comply with 41 CFR Parts 102-117 and 102-118.

M847.303-70 F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

(a) The delivery terms will be stated as “f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice,” under any of the following circumstances:

(1) When it is determined that an f.o.b. origin purchase or delivery order will have transportation charges that do not exceed \$250 and the occasional exception does not exceed that amount by more than \$50.

(2) Single parcel shipments via express, courier, small package, or similar carriers, regardless of shipping cost, if the shipped parcel weighs 70 pounds or less and does not exceed 108 inches in length and girth combined.

(3) Multi-parcel shipments via express, courier small package, or similar carriers for which transportation charges do not exceed \$250 per shipment.

(b) Orders issued on VA Form 90-2138, Orders for Supplies or Services, must identify shipping instructions. When VA Form 90-2138 is not used, the contracting officer shall, via contract terms and conditions, ensure that the vendor do the following:

(1) Consistent with the terms of the contract, pack, mark, and prepare shipment in conformance with carrier requirements to protect the personal property and assure the lowest applicable transportation charge. Follow package specifications found in the National Motor Freight Classification 100 Series.

(2) Add transportation charges as a separate item on the invoice. The invoice must include the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Not include charges for insurance or valuation on the invoice unless the order specifically requires that the shipment be insured or the value be declared.

(4) Not prepay transportation charges on the order if such charges are expected to exceed \$250. Ship collect and annotate the commercial bill of lading, "To be converted to VA Commercial Bill of Lading." Contact the VA Traffic Manager for routing instructions and freight estimate.

(c) Each contracting officer is responsible for:

(1) Obtaining the most accurate estimate possible of transportation charges.

(2) Using the authority in paragraph (a) of this section only when consistent with the circumstances in that paragraph.

(d) When, in accordance with [FAR subpart 28.3](#) and [FAR 47.102](#), a shipment must be insured or the value declared, the contracting officer will specifically instruct the vendor to do so on the order when a written order is used. If the order is oral, the vendor must annotate all copies of the purchase request to show that the insurance/declared value was specifically requested.

M847.306 Transportation factors in the evaluation of offers.

Contracting officers shall comply with VAAR 847.306-70, Records of claims, for all transportation contracts.

M847.306-70 Utilization of environmental transportation evaluation factors.

(a) There are many opportunities to consider environmental criteria in evaluation of offers. A Pass/Fail approach may be appropriate for establishing basic green product requirements, or when market research shows that other sustainable practices are common in the commercial marketplace (i.e. specify minimum recycled content requirements for all supplied packaging materials – an offeror can either meet this requirement (pass) or it cannot (fail), or use of SmartWay participation on a pass/fail basis if market research indicates potential offerors can meet the requirement.

(b) If using a best value tradeoff approach, weighing a vendor's ability to offer desirable sustainable practices above and beyond minimum contract requirements in relation to other factors, such as price, may be desirable. The following are examples of using these evaluation criteria:

(1) Technical Approach and/or Sustainability Plan – Evaluate the contractor's technical approach and plans to implement sustainable practices. Require contractors to detail how they will reduce fuel use and emissions of pollutants (including GHGs), increase use of alternative vehicles and renewable fuels, minimize packaging waste, ensure proper disposal of waste materials, and report on their progress.

(2) Past Performance – Evaluate how the contractor has performed similar services, including their recorded and published emissions metrics and the types of fuels, vehicles, and efficiency practices used.

(3) Life cycle costs for the project, not just the price offered (i.e. specifying take-back of packaging may add cost to a contract, but may save disposal and labor costs).

M847.306-71 Mandatory environmental transportation factors.

In accordance with [FAR Subpart 23.1](#) and Executive Order 13693, contracting officers shall include evaluation factors for transportation contracts to ensure contractors use or supply products covered by the following environmental programs, when applicable:

(a) SmartWay - Includes trucks, rail, multi-modal, and other freight carriers.

(b) BioPreferred - Includes thermal shipping containers and packing and insulating materials.

(c) [Comprehensive Procurement Guidelines \(CPG\)](#) - Transportation and vehicular products, pallets, manual-grade strapping, industrial drums, various paperboard and packaging products, and other products as applicable. CPG guidelines can be found at the following link: <https://www.epa.gov/smm/product-resource-guides-comprehensive-procurement-guideline-cpg-program>

M847.306-72 Optional environmental transportation factors.

Consider the following optional environmental factors when defining performance requirements and evaluation criteria related to transportation, especially as they relate to (1) managing transportation impacts; (2) directly contracted transportation; and (3) inbound goods transportation:

(a) Preferences for contractors to participate in the EPA SmartWay Transport Partnership. SmartWay is a voluntary public-private partnership that aims to reduce the environmental impacts and costs of transportation. Transportation companies that participate in SmartWay use tools developed by EPA to monitor and share emissions

data for customer use. SmartWay partners also get technical assistance to green their networks.

(b) Preferences for contractors who will report on the carbon emissions associated with shipping requirements, either directly or through SmartWay.

(c) Preferences for contractors who will purchase high-quality carbon offsets to further reduce the environmental impact of shipping goods to VA. Some transportation vendors package carbon offsets with services to create “carbon-neutral” shipping options, which can be included in the cost proposal and evaluated as part of the overall solicitation.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART M849—TERMINATION OF CONTRACTS

M849.000	Scope of part.
M849.001	Definitions.
M849.002	Applicability.
M849.002-70	General termination concepts.

Subpart M849.1—General Principles

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M849.102	Notice of termination.
M849.106	Fraud or other criminal conduct.
M849.107	Audit of prime contract settlement proposals and subcontract settlements.
M849.109	Settlement agreements.
M849.109-1	General.
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M849.111	Review of proposed settlements.
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M849.111-71	Required review.
M849.111-72	Submission of information.
M849.112	Payment
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Subpart M849.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

M849.202	Profit.
M849.206	Settlement proposals.
M849.206-1	Submission of settlement proposals.
M849.206-2	Bases for settlement proposals.
M849.208	Equitable adjustment after partial termination.

Subpart M849.4—Termination for Default

M849.402	Termination of fixed-price contracts for default.
M849.402-370	Procedure for default—unique considerations.
M849.402-6	Repurchase against contractor's account.
M849.402-7	Other damages.
M849.402-70	General.

- M849.402-71 Procedures for default and referral to Debarring and Suspending
Official.
M849.402-8 Reporting information.

Subpart M849.6—Contract Termination Forms and Formats

- M849.601-70 Electronic mail or facsimile Notice of Termination for Convenience.

Attachment

[M849-A](#), Settlement Memorandum Tables/Formats

PART M849—TERMINATION OF CONTRACTS

M849.000 Scope of part.

M849.001 Definitions.

Termination Contracting Officer (TCO) means a contracting officer who is settling terminated contracts. At VA a single contracting officer may be responsible for duties in any or all of areas of contracting (*i.e.*, the authority to enter into, administer, and/or terminate contracts and make related determinations and findings), commensurate with the authorities noted on their individual warrants. Reference in this manual to termination contracting officer does not require that terminations be performed by a TCO at a particular office or activity.

M849.002 Applicability.

This part provides procedures, guidance, and information relating to the complete or partial termination of contracts for the convenience of the Government or for default. This part does not apply to commercial item contracts awarded using [FAR part 12](#) procedures. See [FAR 12.403](#) for termination policies for contracts for the acquisition of commercial items. However, for contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed unless it is inconsistent with the requirements and procedures in [FAR 12.403](#), Termination, and the clause at [FAR 52.212-4](#), Contract Terms and Conditions—Commercial Items.

M849.002-70 General termination concepts.

(a) The government may terminate or end a contract at any time whether it is for the convenience of the government or due to the contractor's failure to perform or make progress, *i.e.*, default.

(b) The procedures for terminating a contract vary depending on which type of termination is used. The procedures also vary depending on whether the contract being terminated is a *commercial* or *noncommercial* contract.

(1) When the government terminates a contract for its convenience, whether the contract is commercial or noncommercial, it is called "Termination for Convenience."

(2) When a *noncommercial* contract is terminated due to contractor's failure to perform or to make progress, it is called "Termination for Default."

(3) The termination of a *commercial* contract due to any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance is referred to as a "Termination for Cause."

Subpart M849.1—General Principles

M849.101 Authorities and responsibilities.

(a) A VA contracting officer may terminate contracts for convenience or default to the extent of the authority provided on the Contracting Officer's Certificate of Appointment ([SF 1402](#)). All proposed terminations shall be coordinated through the supporting legal counsel and the head of the contracting activity (HCA), as set forth in this part.

(b) The Deputy Senior Procurement Executive (DSPE) shall be notified prior to terminating prime contracts in excess of \$5 million.

(c) Contracting officers should exercise the authority to terminate a contract only after proper authorization and instructions from the activity which requested that the contract be established.

(d) When requesting legal counsel concurrence, the contracting officer will provide all relevant documents to include a chronology of key events, cure and show cause notices and responses thereto. The request for legal review shall contain, at a minimum, the following—

- (1) The proposed termination notice set forth in [FAR 49.102](#);
- (2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;
- (3) A statement that the factors set forth in [FAR 49.402-3\(f\)](#) have been fully considered; and
- (4) Final decision language and appeal rights.

M849.102 Notice of termination.

(d) *Reinstatement of terminated contracts.* The contracting officer may reinstate a contract only after documenting the decision via a Determination and Findings (D&F). The CO shall forward the D&F to the HCA for approval. The D&F must set forth the reasons why the contract was terminated and why it should now be reinstated. The reinstatement must demonstrate how reinstatement of the contract would be advantageous to the government. The D&F shall be coordinated with legal counsel.

M849.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct related to the settlement of a contract terminated by default or convenience the contracting officer shall:

(1) Immediately discontinue all negotiations.

(2) Prepare a written report of pertinent facts concerning the matter and submit the report and supporting documents as follows:

(i) For contracts, task and delivery orders awarded by a contracting officer from the Office of Construction and Facilities Management (CFM), submit the report and supporting documents to the HCA for CFM for review and concurrence. In turn, the HCA indicates concurrence/non-concurrence and submits the report and documentation to legal counsel and the Office of the Inspector General (OIG) for review and concurrence.

(ii) For all other actions submit the report and supporting documents through the cognizant HCA to the DSPE for approval prior to submission to legal and OIG.

(b) If the evidence indicates fraud or other criminal conduct, the DSPE or the Executive Director, CFM, must forward the report along with recommendations through appropriate channels to OGC and the OIG for action and potential referral to the Department of Justice (DOJ), as appropriate.

(c) The DSPE or the Executive Director, CFM, will advise the contracting officer as to any further action to be taken. Pending receipt of this advice, no VA employee may discuss the matter with the contractor.

(d) The contracting officer will not initiate a collection, recovery or other settlement action while the matter is in the hands of the DOJ without first obtaining the concurrence of the U.S. Attorney concerned, through OIG.

(e) If the contractor makes an inquiry, the contracting officer will advise only that the proposal has been forwarded to higher authority.

M849.107 Audit of prime contract settlement proposals and subcontract settlements.

When considering whether an audit is required, use the guidelines at [FAR 49.002\(d\)](#) regarding action required based on the amount of the settlement proposal. Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in [FAR 49.107](#). Contracting officers shall request

audits directly from the cognizant audit agencies where agreements have been established for their cognizant HCA or will request audits through the VA OIG, Office of Contract Review.

M849.109 Settlement agreements.

M849.109-1 General.

(a) The HCA shall establish internal procedures to ensure the independent review of proposed termination settlements. For settlement agreements, including those made by determination, the contracting officer shall submit a D&F to the HCA for approval. The D&F shall be coordinated with General Counsel.

(b) Use a [Standard Form 30 \(SF 30\)](#), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination when:

(1) The contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(2) To confirm the determination when the contractor does not appeal the contracting officer's decision to terminate the contract in part or as a whole.

(3) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument identification number to the letter of determination.

M849.110 Settlement negotiation memorandum.

(a) VA's acquisition professionals are encouraged to utilize Attachment [M849-A](#), Settlement Memorandum Tables/Formats, for preparation of a settlement negotiation memorandum.

(1) *Fixed-price contracts.* Use the format in Table 849-1, for the termination contracting officer's settlement memorandum for fixed-price contracts terminated for the convenience of the Government. Contracting officers shall recommend that contractors and subcontractors use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(2) *Cost-reimbursement contracts.* Use Part I of the format in Table 849-1 and Part II of the format in Table 849-2 Part II of the format in Table 49-2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

M849.111 Review of proposed settlements.

M849.111-70 Settlement Review Boards.

The DSPE and the Executive Director, Construction and Facilities Management will each establish within its own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one review board is considered desirable. Each settlement review board should be composed of at least three qualified neutral employees without a vested interest in the settlement being reviewed. The membership of each board should include at least one representative from the supporting legal counsel and one representative from the supporting Finance Office.

M849.111-71 Required review.

(a) [FAR 49.111](#) requires each agency to establish procedures, when necessary, for the administrative review of proposed termination settlements. Contracting officers shall submit proposed termination settlements or determinations of amounts due the contractor under a terminated contract for legal review. Settlement agreements valued at \$100,000 - \$5 million will be reviewed by the HCA (or at least one level above the contracting officer). Termination settlement agreements above \$5 million shall be submitted through the HCA to the DSPE for review and approval. Contracting officers shall not execute the settlement agreement or determination prior to receipt of the technical, legal review and final approval of the HCA or DSPE. The legal review of contracts awarded by or on behalf of the VA OIG will be conducted by the Counselor to the Inspector General.

(b) If the contracting officer declines to implement one or more of the recommendations or comments contained in the review memorandum, the contracting officer shall submit a written response to the HCA or DSPE, as applicable in accordance with M849.111-71(a), explaining why the recommendations or comments were not followed. For contracts awarded by or on behalf of the VA OIG, the response shall be submitted to the Counselor to the Inspector General.

M849.111-72 Submission of information.

(a) The contracting officer shall submit to the appropriate HCA a copy of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

- (1) The contractor's or subcontractor's settlement proposal.
- (2) The audit report.

(3) The property disposal report and any required approvals in connection therewith.

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the procurement analyst in the review. The procurement analyst may, at his or her discretion, require the submission of additional information.

(b) In the case of contracts awarded by or on behalf of the VA Office of Inspector General, review will be obtained from the Counselor to the Inspector General.

M849.112 Payment.

M849.112-1 Partial payments.

(a) The contracting officer shall prepare a D&F in response to a contractor's request for partial payment, for approval by the cognizant HCA. The D&F shall set forth all pertinent facts and circumstances resulting in the contracting officer's determination as to whether or not the partial payment should be authorized. The D&F shall be coordinated with a technical reviewer and legal counsel.

(b) Payments shall not be made by VA Finance Officer unless the contracting officer specifically approves an invoice/voucher for payment.

M849.114 Unsettled contract changes.

The contracting officer shall settle all unsettled contract changes as part of the final settlement process.

Subpart M849.2—Additional Principles for Fixed-Price Contract Terminated for Convenience

M849.202 Profit.

The contracting officer shall coordinate the Government's proposed profit position with General Counsel to ensure that it is fair and reasonable.

M849.206 Settlement proposals.

M849.206-1 Submission of settlement proposals.

After the initial notice of termination is transmitted to the contractor, the contracting officer shall follow it with instructions regarding how to submit a settlement proposal, including which forms are to be used.

M849.206-2 Bases for settlement proposals.

After the initial notice of termination is transmitted to the contractor, the contracting officer shall follow it with instructions regarding what basis ("inventory," "total cost," or "other") is preferred for any settlement proposal.

M849.208 Equitable adjustment after partial termination.

The contracting officer shall be responsible for negotiating any equitable adjustment in the price of the continued portion of the contract, except when the negotiation authority is delegated to the Termination Contracting Officer.

Subpart M849.4—Termination for Default

M849.402 Termination of fixed-price contracts for default.

M849.402-370 Procedure for default—unique considerations.

(a) Contracting officers should not terminate for default any contract with a small business firm to whom a Certificate of Competency was issued, or to whom loans were made with SBA's participation, without prior written approval of the HCA.

(b) When unliquidated progress payments, advance payments, guaranteed loans, or anticipated excess repurchase costs are involved, the contracting officer must:

(1) Prepare a statement of the value of the inventory that may be available for offset against the outstanding financing.

(2) Identify and state the approximate amount of the excess acquisition costs applicable.

(c) When a default termination is being considered, the contracting officer shall decide which type of terminating action to take and shall consider the following factors:

(1) The terms of the contract and applicable laws and regulations.

(2) The specific failure of the contractor and the excuses for the failure.

(3) The availability of the supplies or services from other sources.

(4) The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent contractor.

(5) The degree of essentiality of the contractor in the Government acquisition program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts.

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments.

(7) Any other pertinent facts and circumstances.

(d) Once the decision has been made to terminate for default, the contracting officer shall notify the contractor in writing of the possibility of the termination. The notice shall also call attention to the contractor's contractual liabilities, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A format for a show cause notice is at [FAR 49.607](#).

(e) When a termination for default appears imminent, the contracting officer shall provide a written notification to the surety. If the contractor is subsequently terminated for default, a copy of the notice of default shall be sent to the surety.

(f) If the contractor is a small business firm, the contracting officer shall immediately provide a copy of any cure notice or show cause notice to the contracting office's small business liaison or VA Office of Small and Disadvantaged Business Utilization (OSDBU) representative and the Small Business Administration Office nearest the contractor. The contracting officer shall consult with the small business liaison before proceeding with a default termination.

M849.402-6 Repurchase against contractor's account.

(a) VA Form 2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment, or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Department of Veterans Affairs. When repurchase results in the payment of excess costs and the purchase is made through the Supply Fund, the excess cost, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well as those of the Government.

(c) The contracting officer shall—

(1) Place a brief explanation for the repurchase in the contract file.

(2) If practical, use the original contract terms, conditions, and specification for the repurchase. Whether or not the original terms are used, obtain the advice of assigned legal counsel before issuing a solicitation for similar supplies or work (services and construction).

(3) If the reprourement is delayed, protect the Government's rights to recover reprourement costs by documenting the file to explain the circumstances of the delay.

M849.402-7 Other damages.

(a) Even if the repurchase price does not exceed the price of the terminated supplies or work (services and construction), the contracting officer shall include administrative costs incurred for the repurchase when determining the final purchase price. The contracting officer shall include all reprourement costs in a single demand letter (see [FAR 49.402-6\(c\)](#)). The contracting officer shall include detailed documentation in the contract file to support the Government's position that the additional administrative costs were a direct result of the default. The contracting officer shall provide a summary of the additional administrative costs in the demand letter.

(b) Administrative costs include, but are not limited to, the following:

(1) Salaries and fringe benefits paid to Government employees who perform work as a result of the default.

(2) Preaward survey expenses incurred by qualifying reprourement contractors.

(3) Printing and distribution costs of the reprourement solicitation and repurchase contract.

(4) Travel and per diem.

(c) For administrative labor costs, record each of the following:

(1) Name, position, and organization of each employee performing work activities as a consequence of the default.

(2) Date(s) of work and time(s) spent by each employee on the repurchase.

(3) Description of specific tasks performed (for example, solicitation preparation or clerical).

(4) Hourly rate of pay (straight time or overtime).

(5) Applicable fringe benefits.

(6) Explanation of how the time spent by the employees during the re-procurement would have been used on other projects but for the default.

(d) For other incurred administrative costs, the contracting officer shall include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

M849.402-70 General.

(a) Termination for default applies to noncommercial contracts only. It closely resembles a common law breach of contract in which one party fails to live up to its obligations. Termination for default is usually a difficult experience for both the contractor and Government who are likely to suffer significant economic and time losses. Therefore, the Government should only terminate a contract for default if it has clear grounds to do so. The Government is entitled to obtain various forms of damages from the contractor as relief and may also charge the contractor whatever additional costs result from reprocurement of the supply or service. When considering a potential termination (especially one based on default) the contracting officer should coordinate closely with the acquisition team including technical, financial, and customers or users and should consult with OGC before initiating a termination for default. Cure and Show Causes notices must be coordinated with legal counsel, the HCA and, if the contractor is a small business, with the local VA OSDBU prior to release.

M849.402-71 Procedures for default and referral to Debarring and Suspending Official.

If a contract is terminated either for default or for cause, the contracting officer shall review the cause for termination and evaluate whether it falls within one of the areas of [FAR 9.406-2](#), Causes for Debarment. If any of the contractor's actions that contributed to the decision to terminate for default or for cause are of the types of actions described in [FAR 9.406-2](#) that could lead to debarment, the contracting officer shall refer the matter to the suspending and debarring official for appropriate action. The referral shall include all of the pertinent facts, a written recommendation, and other information required under [FAR 9.406-2](#), Procedures. Each such evaluation shall be prepared in writing and shall be included in the contract file along with the resulting referral (if any), regardless of whether or not the contracting officer's evaluation finds that the cause for termination requires referral for suspension or debarment. The contracting officer shall document the contract file with the reason(s) for referring or not referring the contractor for suspension or debarment. When past performance evaluation information is required by [FAR subpart 42.15](#) to be reported in the Contractor

Performance Assessment Reporting System, the contracting officer's evaluation of the termination shall be submitted as part of the past performance evaluation information.

M849.402-8 Reporting information.

The contracting officer shall ensure that information relating to the termination for default notice and subsequent withdrawal or conversion to a termination for convenience of a contract is reported in accordance with [FAR 42.1503\(f\)](#). The contracting officer shall ensure information is accurately reported in the Federal Awardee Performance and Integrity Information System module of the Past Performance Information Retrieval System within three calendar days after the contracting officer makes a withdrawal or conversion of a termination for default to a termination for convenience.

Subpart M849.6—Contract Termination Forms and Formats

M849.601-70 Electronic email or facsimile Notice of Termination for Convenience.

Notice of Termination for Convenience may be sent by electronic email or facsimile. Contracting officers should obtain confirmation from the contractor of the receipt date and time.

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M849—TERMINATION OF CONTRACTS

M849.000	Scope of part.
M849.001	Definitions.
M849.002	Applicability.
M849.002-70	General termination concepts.

Subpart M849.1—General Principles

M849.101	Authorities and responsibilities.
M849.102	Notice of termination.
M849.106	Fraud or other criminal conduct.
M849.107	Audit of prime contract settlement proposals and subcontract settlements.
M849.109	Settlement agreements.
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M849.110	Settlement negotiation memorandum.
M849.111	Review of proposed settlements.
M849.111-70	Settlement Review Boards.
M849.111-71	Required review.
M849.111-72	Submission of information.
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M849.112-1	Partial payments.
M849.114	Unsettled contract changes.

Subpart M849.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

M849.202	Profit.
M849.206	Settlement proposals.
M849.206-1	Submission of settlement proposals.
M849.206-2	Bases for settlement proposals.
M849.208	Equitable adjustment after partial termination.

Subpart M849.4—Termination for Default

M849.402	Termination of fixed-price contracts for default.
M849.402-370	Procedure for default—unique considerations.
M849.402-6	Repurchase against contractor's account.
M849.402-7	Other damages.
M849.402-70	General.

DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

- M849.402-71 Procedures for default and referral to Debarring and Suspending Official.
M849.402-8 Reporting information.

Subpart M849.6—Contract Termination Forms and Formats

- M849.601-70 Electronic mail or facsimile Notice of Termination for Convenience.

Attachment

[M849-A](#), Settlement Memorandum Tables/Formats

PART M849—TERMINATION OF CONTRACTS

M849.000 Scope of part.

M849.001 Definitions.

Termination Contracting Officer (TCO) means a contracting officer who is settling terminated contracts. At VA a single contracting officer may be responsible for duties in any or all of areas of contracting (*i.e.*, the authority to enter into, administer, and/or terminate contracts and make related determinations and findings), commensurate with the authorities noted on their individual warrants. Reference in this manual to termination contracting officer does not require that terminations be performed by a TCO at a particular office or activity.

M849.002 Applicability.

This part provides procedures, guidance, and information relating to the complete or partial termination of contracts for the convenience of the Government or for default. This part does not apply to commercial item contracts awarded using [FAR part 12](#) procedures. See [FAR 12.403](#) for termination policies for contracts for the acquisition of commercial items. However, for contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed unless it is inconsistent with the requirements and procedures in [FAR 12.403](#), Termination, and the clause at [FAR 52.212-4](#), Contract Terms and Conditions—Commercial Items.

M849.002-70 General termination concepts.

(a) The government may terminate or end a contract at any time whether it is for the convenience of the government or due to the contractor's failure to perform or make progress, *i.e.*, default.

(b) The procedures for terminating a contract vary depending on which type of termination is used. The procedures also vary depending on whether the contract being terminated is a *commercial* or *noncommercial* contract.

(1) When the government terminates a contract for its convenience, whether the contract is commercial or noncommercial, it is called "Termination for Convenience."

(2) When a *noncommercial* contract is terminated due to contractor's failure to perform or to make progress, it is called "Termination for Default."

(3) The termination of a *commercial* contract due to any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance is referred to as a "Termination for Cause."

Subpart M849.1—General Principles

M849.101 Authorities and responsibilities.

(a) A VA contracting officer may terminate contracts for convenience or default to the extent of the authority provided on the Contracting Officer's Certificate of Appointment ([SF 1402](#)). All proposed terminations shall be coordinated through the supporting legal counsel and the head of the contracting activity (HCA), as set forth in this part.

(b) The Deputy Senior Procurement Executive (DSPE) shall be notified prior to terminating prime contracts in excess of \$5 million.

(c) Contracting officers should exercise the authority to terminate a contract only after proper authorization and instructions from the activity which requested that the contract be established.

(d) When requesting legal counsel concurrence, the contracting officer will provide all relevant documents to include a chronology of key events, cure and show cause notices and responses thereto. The request for legal review shall contain, at a minimum, the following—

- (1) The proposed termination notice set forth in [FAR 49.102](#);
- (2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;
- (3) A statement that the factors set forth in [FAR 49.402-3\(f\)](#) have been fully considered; and
- (4) Final decision language and appeal rights.

M849.102 Notice of termination.

(d) *Reinstatement of terminated contracts.* The contracting officer may reinstate a contract only after documenting the decision via a Determination and Findings (D&F). The CO shall forward the D&F to the HCA for approval. The D&F must set forth the reasons why the contract was terminated and why it should now be reinstated. The reinstatement must demonstrate how reinstatement of the contract would be advantageous to the government. The D&F shall be coordinated with legal counsel.

M849.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct related to the settlement of a contract terminated by default or convenience the contracting officer shall:

(1) Immediately discontinue all negotiations.

(2) Prepare a written report of pertinent facts concerning the matter and submit the report and supporting documents as follows:

(i) For contracts, task and delivery orders awarded by a contracting officer from the Office of Construction and Facilities Management (CFM), submit the report and supporting documents to the HCA for CFM for review and concurrence. In turn, the HCA indicates concurrence/non-concurrence and submits the report and documentation to legal counsel and the Office of the Inspector General (OIG) for review and concurrence.

(ii) For all other actions submit the report and supporting documents through the cognizant HCA to the DSPE for approval prior to submission to legal and OIG.

(b) If the evidence indicates fraud or other criminal conduct, the DSPE or the Executive Director, CFM, must forward the report along with recommendations through appropriate channels to OGC and the OIG for action and potential referral to the Department of Justice (DOJ), as appropriate.

(c) The DSPE or the Executive Director, CFM, will advise the contracting officer as to any further action to be taken. Pending receipt of this advice, no VA employee may discuss the matter with the contractor.

(d) The contracting officer will not initiate a collection, recovery or other settlement action while the matter is in the hands of the DOJ without first obtaining the concurrence of the U.S. Attorney concerned, through OIG.

(e) If the contractor makes an inquiry, the contracting officer will advise only that the proposal has been forwarded to higher authority.

M849.107 Audit of prime contract settlement proposals and subcontract settlements.

When considering whether an audit is required, use the guidelines at [FAR 49.002\(d\)](#) regarding action required based on the amount of the settlement proposal. Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in [FAR 49.107](#). Contracting officers shall request

audits directly from the cognizant audit agencies where agreements have been established for their cognizant HCA or will request audits through the VA OIG, Office of Contract Review.

M849.109 Settlement agreements.

M849.109-1 General.

(a) The HCA shall establish internal procedures to ensure the independent review of proposed termination settlements. For settlement agreements, including those made by determination, the contracting officer shall submit a D&F to the HCA for approval. The D&F shall be coordinated with General Counsel.

(b) Use a [Standard Form 30 \(SF 30\)](#), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination when:

(1) The contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(2) To confirm the determination when the contractor does not appeal the contracting officer's decision to terminate the contract in part or as a whole.

(3) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument identification number to the letter of determination.

M849.110 Settlement negotiation memorandum.

(a) VA's acquisition professionals are encouraged to utilize Attachment [M849-A](#), Settlement Memorandum Tables/Formats, for preparation of a settlement negotiation memorandum.

(1) *Fixed-price contracts.* Use the format in Table 849-1, for the termination contracting officer's settlement memorandum for fixed-price contracts terminated for the convenience of the Government. Contracting officers shall recommend that contractors and subcontractors use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(2) *Cost-reimbursement contracts.* Use Part I of the format in Table 849-1 and Part II of the format in Table 849-2 Part II of the format in Table 49-2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

M849.111 Review of proposed settlements.

M849.111-70 Settlement Review Boards.

The DSPE and the Executive Director, Construction and Facilities Management will each establish within its own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one review board is considered desirable. Each settlement review board should be composed of at least three qualified neutral employees without a vested interest in the settlement being reviewed. The membership of each board should include at least one representative from the supporting legal counsel and one representative from the supporting Finance Office.

M849.111-71 Required review.

(a) [FAR 49.111](#) requires each agency to establish procedures, when necessary, for the administrative review of proposed termination settlements. Contracting officers shall submit proposed termination settlements or determinations of amounts due the contractor under a terminated contract for legal review. Settlement agreements valued at \$100,000 - \$5 million will be reviewed by the HCA (or at least one level above the contracting officer). Termination settlement agreements above \$5 million shall be submitted through the HCA to the DSPE for review and approval. Contracting officers shall not execute the settlement agreement or determination prior to receipt of the technical, legal review and final approval of the HCA or DSPE. The legal review of contracts awarded by or on behalf of the VA OIG will be conducted by the Counselor to the Inspector General.

(b) If the contracting officer declines to implement one or more of the recommendations or comments contained in the review memorandum, the contracting officer shall submit a written response to the HCA or DSPE, as applicable in accordance with M849.111-71(a), explaining why the recommendations or comments were not followed. For contracts awarded by or on behalf of the VA OIG, the response shall be submitted to the Counselor to the Inspector General.

M849.111-72 Submission of information.

(a) The contracting officer shall submit to the appropriate HCA a copy of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

- (1) The contractor's or subcontractor's settlement proposal.
- (2) The audit report.

(3) The property disposal report and any required approvals in connection therewith.

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the procurement analyst in the review. The procurement analyst may, at his or her discretion, require the submission of additional information.

(b) In the case of contracts awarded by or on behalf of the VA Office of Inspector General, review will be obtained from the Counselor to the Inspector General.

M849.112 Payment.

M849.112-1 Partial payments.

(a) The contracting officer shall prepare a D&F in response to a contractor's request for partial payment, for approval by the cognizant HCA. The D&F shall set forth all pertinent facts and circumstances resulting in the contracting officer's determination as to whether or not the partial payment should be authorized. The D&F shall be coordinated with a technical reviewer and legal counsel.

(b) Payments shall not be made by VA Finance Officer unless the contracting officer specifically approves an invoice/voucher for payment.

M849.114 Unsettled contract changes.

The contracting officer shall settle all unsettled contract changes as part of the final settlement process.

Subpart M849.2—Additional Principles for Fixed-Price Contract Terminated for Convenience

M849.202 Profit.

The contracting officer shall coordinate the Government's proposed profit position with General Counsel to ensure that it is fair and reasonable.

M849.206 Settlement proposals.

M849.206-1 Submission of settlement proposals.

After the initial notice of termination is transmitted to the contractor, the contracting officer shall follow it with instructions regarding how to submit a settlement proposal, including which forms are to be used.

M849.206-2 Bases for settlement proposals.

After the initial notice of termination is transmitted to the contractor, the contracting officer shall follow it with instructions regarding what basis ("inventory," "total cost," or "other") is preferred for any settlement proposal.

M849.208 Equitable adjustment after partial termination.

The contracting officer shall be responsible for negotiating any equitable adjustment in the price of the continued portion of the contract, except when the negotiation authority is delegated to the Termination Contracting Officer.

Subpart M849.4—Termination for Default

M849.402 Termination of fixed-price contracts for default.

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(b) When unliquidated progress payments, advance payments, guaranteed loans, or anticipated excess repurchase costs are involved, the contracting officer must:

(1) Prepare a statement of the value of the inventory that may be available for offset against the outstanding financing.

(2) Identify and state the approximate amount of the excess acquisition costs applicable.

(c) When a default termination is being considered, the contracting officer shall decide which type of terminating action to take and shall consider the following factors:

(1) The terms of the contract and applicable laws and regulations.

(2) The specific failure of the contractor and the excuses for the failure.

(3) The availability of the supplies or services from other sources.

(4) The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent contractor.

(5) The degree of essentiality of the contractor in the Government acquisition program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts.

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments.

(7) Any other pertinent facts and circumstances.

(d) Once the decision has been made to terminate for default, the contracting officer shall notify the contractor in writing of the possibility of the termination. The notice shall also call attention to the contractor's contractual liabilities, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A format for a show cause notice is at [FAR 49.607](#).

(e) When a termination for default appears imminent, the contracting officer shall provide a written notification to the surety. If the contractor is subsequently terminated for default, a copy of the notice of default shall be sent to the surety.

(f) If the contractor is a small business firm, the contracting officer shall immediately provide a copy of any cure notice or show cause notice to the contracting office's small business liaison or VA Office of Small and Disadvantaged Business Utilization (OSDBU) representative and the Small Business Administration Office nearest the contractor. The contracting officer shall consult with the small business liaison before proceeding with a default termination.

M849.402-6 Repurchase against contractor's account.

(a) VA Form 2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment, or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Department of Veterans Affairs. When repurchase results in the payment of excess costs and the purchase is made through the Supply Fund, the excess cost, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well as those of the Government.

(c) The contracting officer shall—

(1) Place a brief explanation for the repurchase in the contract file.

(2) If practical, use the original contract terms, conditions, and specification for the repurchase. Whether or not the original terms are used, obtain the advice of assigned legal counsel before issuing a solicitation for similar supplies or work (services and construction).

(3) If the reprourement is delayed, protect the Government's rights to recover reprourement costs by documenting the file to explain the circumstances of the delay.

M849.402-7 Other damages.

(a) Even if the repurchase price does not exceed the price of the terminated supplies or work (services and construction), the contracting officer shall include administrative costs incurred for the repurchase when determining the final purchase price. The contracting officer shall include all reprourement costs in a single demand letter (see [FAR 49.402-6\(c\)](#)). The contracting officer shall include detailed documentation in the contract file to support the Government's position that the additional administrative costs were a direct result of the default. The contracting officer shall provide a summary of the additional administrative costs in the demand letter.

(b) Administrative costs include, but are not limited to, the following:

(1) Salaries and fringe benefits paid to Government employees who perform work as a result of the default.

(2) Preaward survey expenses incurred by qualifying reprourement contractors.

(3) Printing and distribution costs of the reprourement solicitation and repurchase contract.

(4) Travel and per diem.

(c) For administrative labor costs, record each of the following:

(1) Name, position, and organization of each employee performing work activities as a consequence of the default.

(2) Date(s) of work and time(s) spent by each employee on the repurchase.

(3) Description of specific tasks performed (for example, solicitation preparation or clerical).

(4) Hourly rate of pay (straight time or overtime).

(5) Applicable fringe benefits.

(6) Explanation of how the time spent by the employees during the re-procurement would have been used on other projects but for the default.

(d) For other incurred administrative costs, the contracting officer shall include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

M849.402-70 General.

(a) Termination for default applies to noncommercial contracts only. It closely resembles a common law breach of contract in which one party fails to live up to its obligations. Termination for default is usually a difficult experience for both the contractor and Government who are likely to suffer significant economic and time losses. Therefore, the Government should only terminate a contract for default if it has clear grounds to do so. The Government is entitled to obtain various forms of damages from the contractor as relief and may also charge the contractor whatever additional costs result from reprocurement of the supply or service. When considering a potential termination (especially one based on default) the contracting officer should coordinate closely with the acquisition team including technical, financial, and customers or users and should consult with OGC before initiating a termination for default. Cure and Show Causes notices must be coordinated with legal counsel, the HCA and, if the contractor is a small business, with the local VA OSDBU prior to release.

M849.402-71 Procedures for default and referral to Debarring and Suspending Official.

If a contract is terminated either for default or for cause, the contracting officer shall review the cause for termination and evaluate whether it falls within one of the areas of [FAR 9.406-2](#), Causes for Debarment. If any of the contractor's actions that contributed to the decision to terminate for default or for cause are of the types of actions described in [FAR 9.406-2](#) that could lead to debarment, the contracting officer shall refer the matter to the suspending and debaring official for appropriate action. The referral shall include all of the pertinent facts, a written recommendation, and other information required under [FAR 9.406-2](#), Procedures. Each such evaluation shall be prepared in writing and shall be included in the contract file along with the resulting referral (if any), regardless of whether or not the contracting officer's evaluation finds that the cause for termination requires referral for suspension or debarment. The contracting officer shall document the contract file with the reason(s) for referring or not referring the contractor for suspension or debarment. When past performance evaluation information is required by [FAR subpart 42.15](#) to be reported in the Contractor

Performance Assessment Reporting System, the contracting officer's evaluation of the termination shall be submitted as part of the past performance evaluation information.

M849.402-8 Reporting information.

The contracting officer shall ensure that information relating to the termination for default notice and subsequent withdrawal or conversion to a termination for convenience of a contract is reported in accordance with [FAR 42.1503\(f\)](#). The contracting officer shall ensure information is accurately reported in the Federal Awardee Performance and Integrity Information System module of the Past Performance Information Retrieval System within three calendar days after the contracting officer makes a withdrawal or conversion of a termination for default to a termination for convenience.

Subpart M849.6—Contract Termination Forms and Formats

M849.601-70 Electronic email or facsimile Notice of Termination for Convenience.

Notice of Termination for Convenience may be sent by electronic email or facsimile. Contracting officers should obtain confirmation from the contractor of the receipt date and time.

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