



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 801, 811, 832, 852, and 870

RIN 2900-AP81

VA Acquisition Regulation: Describing Agency Needs; Contract Financing

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the Federal Register. In particular, this rulemaking revises VAAR concerning Describing Agency Needs and Contract Financing, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulation System, Solicitation Provisions and Contract Clauses, and Special Procurement Controls.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington DC 20001, (202) 382-2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 26, 2018, VA published a proposed rule in the Federal Register (83 FR 12922) which announced VA's intent to amend regulations for VAAR Case RIN 2900-AP81 (parts 811 and 832). In particular, this final rule revises part 811 to remove coverage of what brand name or equal purchase descriptions must include as the FAR provides sufficient coverage; removes coverage pertaining to brand names based on current FAR coverage; removes purchase description clauses; removes VAAR coverage of bid samples; removes the section providing coverage on procedures for negotiated procurements; removes VAAR coverage on "items peculiar to one manufacturer." It revises part 832 to add policy to implement an OMB memorandum entitled "Accelerating Payments to Small Businesses for Goods and Services," to encourage making payments to small business contractors within 15 days of receipt of invoice; delegates authority within VA to approve contract terms concerning advance payments; and removes subparts 832.5, Progress Payments Based on Costs and 832.8, Assignment of Claims, as both contain internal procedural guidance not having a significant effect beyond the internal operating procedures of VA.

VA provided a 60-day comment period for the public to respond to the proposed rule. The comment period for the proposed rule ended on May 25, 2018 and VA received no comments. This document adopts as a final rule, the proposed rule published in the Federal Register on March 26, 2018, with minor stylistic and

grammatical edits. This final rule has Federal Register administrative format changes in the amendatory text which make no substantive text changes at the affected sections.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal Governments or on the private sector.

Paperwork Reduction Act

This final rule imposes the following amended information collection requirements to two of the six existing information collection approval numbers associated with this rule. Although this action contains provisions constituting collections of information at 48 CFR 852.236-82 and 852.236-83, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3521), no new proposed collections of information are associated with these clauses. The information collection requirements for 48 CFR 852.236-82 and 852.236-83 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0422. However, this information collection was submitted to OMB to revise the title and to redesignate and renumber the two clauses currently numbered as sections 852.236-82, Payments Under Fixed-Price Construction Contracts (Without NAS), and 852.236-

83, Payments Under Fixed-Price Construction Contracts (Including NAS). Accordingly, they will reflect the new designation and revised titles as set forth in the amendatory language of the rule to read: 852.232-70, Payments Under Fixed-Price Construction Contracts (Without NAS-CPM), and 852.232-71, Payments Under Fixed-Price Construction Contracts (Including NAS-CPM), respectively, under the associated OMB control number 2900-0422. The references to the old numbers—852.236-82 and 852.236-83, are accordingly removed. There is no change in the information collection burden that is associated with this action. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for this information collection was published on Reginfo.gov on May 15, 2018.

This final rule imposes the following amended information collection requirements to one of the six existing information collection approval numbers associated with this rule. Although this action contains provisions constituting collections of information at 48 CFR 852.211-70, Service Data Manuals, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3521), no new proposed information collection is associated with this clause. The information collection requirement for 48 CFR 852.211-70 is currently approved by OMB and has been assigned OMB control number 2900-0587. However, this information collection has been submitted to OMB to revise the title from “Service Data Manuals,” to read, “Equipment Operation and Maintenance Manuals.” The information collection request reflects the revised title for this clause to read: 852.211-70, Equipment Operation and Maintenance Manuals, under the associated OMB control number 2900-0587. By revising the clause and removing

the requirement to develop Government-specified service manuals, VA has eliminated an unnecessary burden on the public by making use of commercial operation and maintenance manuals consistent with the general public and established commercial practices, thereby reducing by half the estimated annual hourly burden which is now estimated at 311 hours, a reduction of 310 annual hours. Notice of OMB approval for this information collection will be published in a future Federal Register document.

This final rule removes two of the six existing information collection requirements associated with this action at 48 CFR 852.211-71, Special Notice, and 48 CFR 852.211-73, Brand Name or Equal. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3521), it discontinues the associated corresponding approved OMB control numbers, 2900-0588 and 2900-0585, respectively. For 48 CFR 852.211-71, Special Notice, and its corresponding OMB control number 2900-0588, this results in a removal of 875 estimated annual burden hours. For 48 CFR 852.211-73, Brand Name or Equal, and its corresponding OMB control number 2900-0585, this results in a removal of 1,125 estimated annual burden hours. Notice of OMB approval for the information collection requests will be published in a future Federal Register document.

This final rule also contains two other provisions constituting a collection of information at 48 CFR 852.211-72, Technical Industry Standards, and 48 CFR 832.202-4, Security for Government financing, which remain unchanged. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collection of information is associated with these provisions as a part of this rule. The information collection requests for 48 CFR 852.211-72 and 48 CFR 832.202-4 are currently approved by OMB and have been assigned OMB control numbers 2900-0586

and 2900-0688, respectively. The burden of these information collections remains unchanged. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), OMB has approved the reporting or recordkeeping provisions that are included in the clause and the text under section 832.202-4 cited above and has given the VA the following approval numbers: OMB 2900-0586 and OMB 2900-0688, respectively.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will generally be small business neutral. The rule text does not change VA’s policy regarding small businesses. Therefore, the rule does not have a significant economic impact on substantial number of small entities. There are no increased and/or decreased costs to small entities. The overall impact of this final rule will be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA’s internal operating procedures. VA is merely adding existing and current regulatory requirements to the VAAR and removing any guidance that is applicable only to VA’s internal operation processes or procedures. VA estimates no cost impact to individual business resulting from these rule updates. This rulemaking does not change VA’s policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C.

601–612. Therefore, under 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant regulatory action under E.O. 12866 because it does not raise novel legal or policy

issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

List of Subjects

48 CFR Part 801

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements.

48 CFR Parts 811 and 832

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 870

Asbestos, Frozen foods, Government procurement, Telecommunications.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on August 24, 2018, for publication.

Dated: August 28, 2018.

Consuela Benjamin,
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR parts 801, 811, 832, 852, and 870 as follows:

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

1. The authority citation for part 801 is revised to read as follows:

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

2. In section 801.106, table columns titled “48 CFR part or section where identified and described” and “Current OMB control number” are amended by—

a. Removing the reference to section 832.006-4 and OMB Control Number 2900-0668.

b. Removing the reference to section 852.211-71 and OMB Control Number 2900-0588.

c. Removing the reference to section 852.211-73 and OMB Control Number 2900-0585.

d. Removing “852.236-82 through.”

e. Adding an entry for sections 852.232-70 and 852.232-71 in numerical order.

The addition reads as follows:

801.106 OMB approval under the Paperwork Reduction Act.

* * * * *

48 CFR part or section where identified and described	Current OMB control number
* * * * *	
852.232-70 and 852.232-71	2900-0422
* * * * *	

3. Under the authority of 48 CFR 1.301 through 1.304, the heading of subchapter B is revised to read as follows:

SUBCHAPTER B—ACQUISITION PLANNING

PART 811—DESCRIBING AGENCY NEEDS

4. The authority citation for part 811 is revised to read as follows:

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

811.001 [Removed]

5. Section 811.001 is removed.

6. Revise subpart 811.1 to read as follows:

Subpart 811.1—Selecting and Developing Requirements Documents

811.107-70 Contract clause.

The contracting officer shall insert the clause at 852.211-70, Equipment Operation and Maintenance Manuals, in solicitations and contracts for technical medical equipment, and other technical and mechanical equipment and devices where the requiring activity determines manuals are a necessary requirement for operation and maintenance of the equipment.

7. Revise subpart 811.2 to read as follows:

Subpart 811.2—Using and Maintaining Requirements Documents

811.204-70 Contract clause.

The contracting officer shall insert the clause at 852.211-72, Technical Industry Standards, in solicitations and contracts requiring conformance to technical industry standards, federal specifications, standards and commercial item descriptions unless comparable coverage is included in the item specification.

Subpart 811.4 [Removed and Reserved]

8. Subpart 811.4 is removed and reserved.

Subpart 811.5 [Removed and Reserved]

9. Subpart 811.5 is removed and reserved.

Subpart 811.6 [Removed and Reserved]

10. Subpart 811.6 is removed and reserved.

PART 832—CONTRACT FINANCING

11. The authority citation for part 832 is revised to read as follows:

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

12. Section 832.001 is added to read as follows:

832.001 Definitions.

As used in this part:

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

(b) Electronic form means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in 832.7002-

1. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(c) Payment request means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

13. Revise section 832.006-1 to read as follows:

832.006-1 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.

832.006-2 and 832.006-3 [Removed]

14. Remove sections 832.006-2 and 832.006-3.

15. Section 832.006-4 is revised to read as follows:

832.006-4 Procedures.

(b) The Remedy Coordination Official (RCO) for VA is the Deputy Senior Procurement Executive (DSPE) who shall carry out the responsibilities of the Secretary or designee in FAR 32.006-4(b).

(e) The RCO shall carry out the responsibilities of the agency head in FAR 32.006-4(e) to notify the contractor of the reasons for the recommended action and of its right to submit information within a reasonable period of time in response to the proposed action under FAR 32.006.

(1) 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 and may supplement the oral presentation with written information and argument.

(2) 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 his or her recommendations on the information available. Any recommendation of the RCO under FAR 31.006-4(a) and paragraph (b) of this section, must address the results of this notification and the information, if any, provided by the contractor. After reviewing all the information, the RCO shall make a recommendation to the SPE whether or not substantial evidence of fraud exists.

(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 Office of the Inspector General (OIG). The contracting officer will place a copy of the determination and the supporting documentation in the contract file.

Subpart 832.1—Non-Commercial Item Purchase Financing

16. Section 832.111 is revised to read as follows:

832.111 Contract clauses for non-commercial purchases.

17. Section 832.111-70 is added to read as follows:

832.111-70 VA contract clauses for non-commercial purchases.

(a)(1) Insert the clause at 852.232-70, Payments Under Fixed-Price Construction Contracts (Without NAS-CPM) in solicitations and contracts that contain the FAR clause

at 52.232-5, Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract does not require use of the “Network Analysis System – Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b)(1) Insert the clause at 852.232-71, Payments Under Fixed-Price Construction Contracts (Including NAS-CPM), in solicitations and contracts that contain the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and if the solicitation or contract requires use of the “Network Analysis System – Critical Path Method (NAS-CPM).”

(2) If the solicitation or contract includes guarantee period services, the contracting officer shall use the clause with its Alternate I.

Subpart 832.2—Commercial Item Purchase Financing

832.201 [Removed]

18. Section 832.201 is removed.

19. Section 832.202-1 is revised to read as follows:

832.202-1 Policy.

(d) HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts for commercial items with unusual contract financing or with commercial interim or advance payments approved for the previous fiscal year. The report shall include the contract number and amount, the amount of the unusual contract financing or with commercial

interim or advance payments approved, and the kind and amount of security obtained for the advance.

20. Section 832.202-4 is revised to read as follows:

832.202-4 Security for Government financing.

(a)(2) An offeror's financial condition may be considered adequate security to protect the Government's interest when the Government provides contract financing. In assessing the offeror's financial condition, the contracting officer may obtain, to the extent required, the following information—

(i) A current year interim balance sheet and income statement and balance sheets and income statements for the two preceding fiscal years. The statements should be prepared in accordance with generally accepted accounting principles and must be audited and certified by an independent public accountant or an appropriate officer of the firm;

(ii) A cash flow forecast for the remainder of the contract term showing the planned origin and use of cash within the firm or branch performing the contract;

(iii) Information on financing arrangements disclosing the availability of cash to finance contract performance, the contractor's exposure to financial risk, and credit arrangements;

(iv) A statement of the status of all State, local, and Federal tax accounts, including any special mandatory contributions;

(v) A description and explanation of the financial effects of any leases, deferred purchase arrangements, patent or royalty arrangements, insurance, planned capital

expenditures, pending claims, contingent liabilities, and other financial aspects of the business; and

(vi) Any other financial information deemed necessary.

Subpart 832.4—Advance Payments for Non-Commercial Items

21. Section 832.402 is revised to read as follows:

832.402 General.

(c)(1)(iii) The authority to make the determination required by FAR 32.402(c)(1)(iii) and to approve contract terms is delegated to the head of the contracting activity (HCA). The request for approval shall include the information required by FAR 32.409-1 and shall address the standards for advance payment in FAR 32.402(c)(2). HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on number of contracts for non-commercial items with advance payments approved in the previous fiscal year. The report shall include the contract number and amount, the amount of the advance payment, and the kind and amount of security obtained for the advance.

22. Section 832.404 is revised to read as follows:

832.404 Exclusions.

(b)(1) As permitted by 31 U.S.C. 3324(d)(2), VA allows advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use, notwithstanding the provisions of 31 U.S.C. 3324(a). The term “other publications” includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual use.

(2) As permitted by 31 U.S.C. 1535, VA allows advance payment for services and supplies obtained from another Government agency.

(3) As permitted by 5 U.S.C. 4109, VA allows advance payment for all or any part of the necessary expenses for training Government employees, including obtaining professional credentials under 5 U.S.C. 5757, in Government or non-Government facilities, including the purchase or rental of books, materials, and supplies or services directly related to the training of a Government employee.

Subpart 832.5 [Removed and Reserved]

23. Subpart 832.5 is removed and reserved.

Subpart 832.8 [Removed and Reserved]

24. Subpart 832.8 is removed and reserved.

Subpart 832.9—Prompt Payment

832.904 [Redesignated as 832.904-70 and Amended]

25. Redesignate section 832.904 as 832.904-70 and revise newly redesignated section 832.904-70 to read as follows:

832.904-70 Determining payment due dates for small businesses.

Pursuant to Office of Management and Budget Memorandum M-11-32, Accelerating Payments to Small Businesses for Goods and Services, contracting officers shall, to the full extent permitted by law, make payments to small business contractors as soon as practicable, with the goal of making payments within 15 days of receipt of a proper invoice and confirmation that the goods and services have been received and accepted by the Federal Government.

Subpart 832.11 [Removed and Reserved]

26. Subpart 832.11 is removed and reserved.

27. Revise subpart 832.70 to read as follows:

Subpart 832.70—Electronic Invoicing Requirements

Sec.

832.7000 General.

832.7001 Electronic payment requests.

832.7001-1 Data transmission.

832.7001-2 Contract clause.

832.7000 General.

This subpart prescribes policy requirements for submitting and processing payment requests in electronic form.

832.7001 Electronic payment requests.

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for—

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

- (2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;
- (3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;
- (4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or
- (5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.7001-1 Data transmission.

The contractor shall submit electronic payment requests through—

- (a) VA's Electronic Invoice Presentment and Payment System at the current website address provided in the contract; or
- (b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI).

832.7001-2 Contract clause.

The contracting officer shall insert the clause at 852.232-72, Electronic Submission of Payment Requests, in solicitations and contracts exceeding the micro-purchase threshold, except those for which the contracting officer has directed otherwise under 832.7001, and those paid with a Governmentwide commercial purchase card.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

28. The authority citation for part 852 is revised to read as follows:

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

Subpart 852.2—Text of Provisions and Clauses

29. Section 852.211-70 is revised to read as follows:

852.211-70 Equipment Operation and Maintenance Manuals.

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

EQUIPMENT OPERATION AND MAINTENANCE MANUALS (NOV 2018)

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

(End of clause)

852.211-71 [Removed and Reserved]

30. Section 852.211-71 is removed and reserved.

31. Section 852.211-72 is revised to read as follows:

852.211-72 Technical Industry Standards.

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

TECHNICAL INDUSTRY STANDARDS (NOV 2018)

(a) The Contractor shall conform to the standards established by: _____

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

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

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

[Organization]_____ [Mail or email address] _____.

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

(End of clause)

852.211-73, 852.211-74, and 852.211-75 [Removed and Reserved]

32. Remove and reserve sections 852.211-73 through 852.211-75.

33. Add section 852.232-70 to read as follows:

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

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

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(WITHOUT NAS-CPM) (NOV 2018)

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

(a) Retainage. (1) The Contracting Officer may retain funds—

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

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

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

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

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

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

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

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

provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

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

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

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

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

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

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

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

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

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

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

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

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

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

(e) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of

compliance, proof of title, nondiscrimination compliance reports, or any other requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

(f) The Contracting Officer will notify the Contractor in writing within 10 calendar-days of exercising retainage against any payment in accordance with FAR clause 52.232-5(e).

The notice shall disclose the amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of clause)

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

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

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

and the Contracting Officer shall inform the Contractor of the unsatisfactory performance, allowing the Contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

34. Add section 852.232-71 to read as follows:

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

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

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

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

(a) Retainage. (1) The Contracting Officer may retain funds—

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

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

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

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

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

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

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

contract requirements.

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

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

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

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

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

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

correct and test systems after the material has been installed.

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

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

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

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

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

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

- (1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;
 - (2) The materials and/or equipment are approved by the resident engineer;
 - (3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;
 - (4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and
 - (5) The Contractor obtains the concurrence of its surety for off-site storage.
- (e) The Government reserves the right to withhold payment until samples, shop

drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

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

(End of clause)

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

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

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

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

35. Section 852.232-72 is revised to read as follows:

852.232-72 Electronic Submission of Payment Requests.

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

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2018)

(a) Definitions. As used in this clause—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

852.236-82 and 852.236-83 [Removed and Reserved]

36. Remove and reserve sections 852.236-82 and 852.236-83.

PART 870—SPECIAL PROCUREMENT CONTROLS

37. The authority citation for part 870 is revised to read as follows:

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

870.112 and 870.113 [Removed]

38. Remove sections 870.112 and 870.113.

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