



DEPARTMENT OF VETERANS AFFAIRS

8320-01

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

RIN 2900-AP81

Revise and Streamline VA Acquisition Regulation - Parts 811 and 832

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to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 These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors.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'll publish them in the Federal Register. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR Parts 811 - Describing Agency Needs and Part 832 – Contract Financing, as well as affected parts 801 - Department of Veterans Affairs Acquisition Regulation System, 852 - Solicitation Provisions and Contract Clauses, and 870 - Special Procurement Controls.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER] to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP81 – Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014-V004 – parts 811, 832).” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

FOR FURTHER INFORMATION CONTACT: Mr. Ricky Clark, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington DC 20001, (202) 697-3565. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are broken up consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. § 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

## Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance.

### VAAR Part 801—Department of Veterans Affairs Acquisition Regulation System

We propose to amend the authority for part 801 to remove the citation of 38 U.S.C. 501, and to add 41 U.S.C 1121, 41 U.S.C. 1303, an updated positive law codification of, to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Government wide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA; and 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer.

This proposed rule contains existing information collection requirements. The proposed rule would result in multiple actions affecting these information collections, including outright removal of the information collection and redesignating the information collection burden associated with several clauses or provisions by renumbering the clause or provision. We propose to revise certain clause or provision numbers in VAAR

part 801 only when removing the actual information collection and its associated burden, or when redesignating and renumbering the clause or provision under the associated Office of Management and Budget (OMB) approval number.

In section 801.106, OMB approval under the Paperwork Reduction Act, we propose to amend section 801.106 table columns titled “48 CFR part or section where identified and described,” and “Current OMB control number.” We propose to remove the reference to section 832.006-4 and the associated OMB control number 2900-0688. This information collection burden under the associated OMB control number was previously removed via a published Notice of Office of Management and Budget Action dated March 2, 2015, Information Collection Reference (ICR) 201406-2900-017, which approved the removal of the information collection and a reduction of the associated burden under OMB approval number 2900-0688. Therefore, it is proposed for removal from this table. Information collection is approved at the FAR level under FAR OMB approval number 9000-0138, making it unnecessary for a separate information collection approval in the VAAR.

In section 801.106, OMB approval under the Paperwork Reduction Act, we propose to amend section 801.106 table columns titled “48 CFR part or section where identified and described,” and “Current OMB control number.” We propose to remove the reference to subsection 852.211-71, Special Notice, and discontinue the corresponding OMB control number 2900-0588, as the provision conflicts with FAR 52.214-21. It currently requires literature to be provided after award and thus conflicts with the FAR and the Government’s procedures for evaluating relevant materials during source selection and prior to award decisions.

In section 801.106, in reference to the table described, we propose to remove the reference to subsection 852.211-73, Brand Name or Equal, and discontinue the corresponding OMB control number 2900-0585, as the topical area the clause covers, “brand name or equal,” or “items peculiar to one manufacturer,” has sufficient coverage in FAR 11.105 and the associated provision in FAR 52.211-6, Brand Name or Equal.

In section 801.106, in reference to the table described, we propose to remove the reference to section 852.236-82, Payments under fixed-price construction contracts (without NAS), and remove the reference to section 852.236-83, Payments under fixed-price construction contracts (including NAS). Both of these clauses, pertaining to “payments under fixed-price construction,” have been renumbered to reflect their prescription under Part 832. The associated OMB control number 2900-0422 will now reflect information collections under the new clause numbers—852.232-70 and 852.232-71 as described in further detail under the Paperwork Reduction Act section of this preamble, although these are not new collections.

#### Subchapter B—Competition and Acquisition Planning

We propose to revise the title of Subchapter B to conform to the title in the Federal Acquisition Regulation, 48 CFR, chapter 1, “Acquisition Planning.”

#### VAAR Part 811—Describing Agency Needs

We propose to revise the Table of Contents to reflect the revision of subparts 811.1 and 811.2, and the deletion of subparts 811.4, 811.5, and 811.6.

We propose to revise the part 811 authorities to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer, and 41 U.S.C 1303, an updated positive law codification to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

We propose to remove section 811.001, Definitions, because the coverage in FAR 11.104 provides adequate coverage of what brand name or equal purchase descriptions must include. The VAAR had merely paraphrased the same information. In accordance with FAR drafting standards and the requirement in FAR 1.304(b)(1) that agency acquisition regulations shall not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR, this section is therefore proposed for removal.

In subpart 811.1, Selecting and Developing Requirements Documents, we propose to remove section 811.103, Market acceptance, and the underlying subsection 811.103-70, Technical industry standards. We propose to revise the prescription to clause 852.211-72, Technical industry standards, for clarity and simplification of the language, and to move the prescription of the clause to 811.204-70 to comport with the FAR structure, as technical industry standards are not related to coverage in FAR 11.103, but would fall under FAR 11.204.

We propose to remove the section title at 811.104, Use of Brand Name or Equal purchase descriptions, and subsection at 811.104-70, Brand name or equal purchase

descriptions, because FAR 11.104, provides adequate coverage of what brand name or equal purchase descriptions must include.

We propose to remove subsections 811.104-71, Purchase description clauses, and 811.104-72, Limited application of brand name or equal, because the subject is adequately covered in FAR clause 52.211-6, Brand name or equal.

We propose to remove subsection 811.104-73, Bid samples, as coverage is adequate in FAR 14.202-4, and clause 52.214-20.

We propose to remove subsection 811.104-74, Bid evaluation and award, since it duplicates coverage in FAR clause 52.211-6.

We propose to remove subsection 811.104-75, Procedure for negotiated procurements, since there is no need to have separate policy and procedures for negotiated and sealed bid solicitations. FAR covers “brand name or equal” without a distinction between sealed bid and negotiated solicitations.

We propose to remove 811.105, Items peculiar to one manufacturer, since the subject is adequately covered in FAR 11.105.

In subpart 811.1, section 811.107, Contract clauses, we propose to amend the number and title of the existing section to read as 811.107-70, Contract clause, to better reflect its placement in accordance with FAR numbering conventions. It fits intelligibly as a supplement to FAR 11.107, Solicitation provision, but the VAAR is supplementing with a clause in this area and not a provision, necessitating the more accurate title.

Subsection 811.107-70 prescribes a new clause 852.211-70, Equipment Operation and Maintenance Manuals, which replaces the existing clause 852.211-70, Service data manuals.

In subpart 811.2, Using and Maintaining Requirements Documents, we propose to remove section 811.202, Maintenance of standardization documents, as it is procedural in nature and will be moved to the VAAM.

Under subpart 811.2, we propose to revise and renumber section 811.204, Contract clause, to subsection 811.204-70, Contract clause, which contains text prescribing clause 852.211-72, Technical industry standards. The prescription for 852.211-72 was moved from 811.103-70 to better comport with FAR structure numbering and arrangement.

We propose to remove subparts 811.4, Delivery or Performance Schedules, and 811.5, Liquidated Damages, as the policy is redundant to FAR guidance.

We propose to remove subpart 811.6, Priorities and Allocations, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

#### VAAR Part 832—Contract Financing

We propose to revise the Table of Contents to reflect the revision of subparts 832.1, 832.2, 832.9 and 832.70, and the deletion of subparts 832.5, 832.8, and 832.11.

We propose to revise the part 832 authorities to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer; and 41 U.S.C 1303, to include an updated positive law codification

We propose to add section 832.001, Definitions. This section would add three definitions of terms relating to electronic invoicing. We propose to amend subsection 832.006-1, General, to spell out the title of Senior Procurement Executive (SPE) and to delete the last sentence as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM.

We propose to remove subsection 832.006-2, Definitions, which only included one definition for the Remedy Coordination Official (RCO). This information would be added in subsection 832.006-4 and would make the need for a separate definition repeating the same thing unnecessary.

We propose to remove subsection 832.006-3, Responsibilities, as it provides internal procedural guidance not having a significant effect beyond the internal operating procedures of VA (see FAR 1.301(b)) and which will be moved to the VAAM.

We propose to amend subsection 832.006-4, Procedures, to update the existing VA agency procedures and to delete paragraphs (a) and (c) as internal operating procedures of VA not having a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)) and which will be moved to the VAAM. We propose to add new paragraphs (b), (e), and (g) to implement FAR required agency procedures which describes notifying contractors, the contractor's right to provide information on its behalf concerning a finding of fraud in payment requests, the time period to provide the information to the Government and that the Senior Procurement Executive (SPE) will provide a copy of each final determination and supporting

documentation to the contractor, the RCO, the Contracting Officer, and the VA Office of Inspector General (OIG).

In subpart 832.1, Non-Commercial Item Purchase Financing, we propose to amend section 832.111, Contract clauses for non-commercial purchases, to renumber the section as subsection 832.111-70, retitle it as “VA contract clauses for non-commercial purchases,” and to reconfigure the paragraphs to conform more closely to FAR prescription language for clauses and provisions. Also, the clauses were renumbered to reflect that they are prescribed in part 832 and not 836 as they were previously numbered, and the clauses were retitled for clarification.

In subpart 832.2, Commercial Item Purchase Financing, we propose to remove section 832.201, Statutory authority, and move internal procedural guidance not having a significant effect beyond the internal operating procedures of VA (see FAR 1.301(b)) and which will be moved to the VAAM. It contains a delegation of authority for Contracting Officers to make determinations regarding terms and conditions for payment for commercial items and whether they are appropriate, customary, and in the best interest of the Government.

We propose to amend subsection 832.202-1, Policy, to make the paragraph comport with the corresponding FAR coverage, to reflect that Heads of Contracting Activities (HCAs) shall report no later than December 31 of each calendar year, to the Senior Procurement Executive (SPE) and Deputy Senior Procurement Executive (DSPE), on the number of contracts for commercial items with unusual contract financing, commercial interim or advance payments that were approved for the previous fiscal year (1 October 20XX – 30 September 20XX). This would stipulate what is to be

included in the report, the amount of such unusual contracting financing, commercial interim or advance payments that were approved, and the kind and amount of security obtained by the contractor for the advance.

We propose to amend subsection 832.202-4, Security for Government financing, to make the paragraphs comport with the corresponding FAR coverage, and to delete the mention of a Dun and Bradstreet report.

In subpart 832.4, Advance Payments for Non-Commercial Items, we propose to amend 832.402, General, to provide updated and revised VA procedures on who in the VA is delegated authority to make the determination described at FAR 32.402(c)(1)(iii) and to approve contract terms concerning advance payments. This is delegated to the Head of the Contracting Activity (HCA). Typically VA delegations are contained in the VAAM but here, where it may impact the use and approval of unique financing arrangements that contractors may need to be aware of, the delegation is being retained in the VAAR.

We propose to amend section 832.404, Exclusions, to renumber the paragraphs so it better comports with the FAR coverage and to clarify language and the citation of the authorities listed. We include information regarding the applicability of 31 U.S.C. 3324(d)(2), which allows VA to issue advance payment for subscriptions or other charges for newspapers, magazines, periodicals, and other publications for official use. In addition, the statutory authority is included in section 832.404 for 31 U.S.C. 1535, and permits the VA to issue advance payment for services and supplies obtained from another Government agency. Further, language is added that includes that as permitted by 5 U.S.C. 4109, VA is permitted to issue 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.

We propose to remove 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 (see FAR 1.301(b)) and which will be moved to the VAAM.

In subpart 832.9, Prompt Payment, we propose to revise section 832.904, Determining payment due dates, to remove the text, but retain the title in the VAAR as it is related to a new proposed subsection that will fall underneath it. The procedures in the text will be moved to the VAAM as internal operational procedures of the VA.

We propose to add subsection 832.904-70 to implement OMB Memorandum M-11-32, dated September 14, 2011, and to encourage making payments to small business contractors within 15 days of receipt of invoice.

We propose to remove subpart 832.11, Electronic Funds Transfer, and section 832.1106, EFT mechanisms, as they contain internal procedural guidance not having a significant effect beyond the internal operating procedures of VA (see FAR 1.301(b)) and which will be moved to the VAAM.

In subpart 832.70, Electronic Invoicing Requirements, we propose to amend section 832.7000, General, to reflect that the subpart contains policy requirements rather than procedures.

We propose to remove section 832.7001, Definitions, since two of the definitions are provided in the FAR and the other relevant definitions have been moved to section 832.001, Definitions, which covers the entire part. We propose to revise the title to reflect “Electronic payment requests,” and to reflect text now in section 832.7002.

We propose to remove section 832.7002, Electronic payment requests, as the content has been moved to 832.7001.

We propose to amend subsection 832.7002-1, Data transmission, to renumber and redesignate it as subsection 832.7001-1; to remove the website address from paragraph (a); to require the address to be provided in the contract; and to delete from paragraph (b) a website which may in time become obsolete.

We propose to amend subsection 832.7002-2, Contract clause, to renumber and redesignate it as subsection 832.7001-2. We also propose to add a stipulation to the prescription that the clause does not apply to contracts paid with the Governmentwide commercial purchase card.

#### VAAR Part 852—Solicitation Provisions and Contract Clauses

In part 852, we propose to amend the authority by adding 41 U.S.C. 1303 to include an updated positive law codification, to reflect additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

We propose to amend section 852.211-70, Service data manuals, and to revise the title to read, “Equipment Operation and Maintenance Manuals.” This requires

Contracting Officers to insert this revised clause in solicitations for technical medical equipment and devices, and/or other technical and mechanical equipment where the requiring activity determines manuals are a necessary requirement for operation and maintenance of the equipment. It removes the prior extensive detailed list of specific information that would need to be developed and instead relies on existing commercial industry practices to provide already developed commercial manuals.

We propose to remove subsection 852.211-71, Special Notice, as it is redundant to guidance contained in the FAR.

We propose to amend subsection 852.211-72, Technical industry standards, to more clearly set forth the requirements that the contractor shall conform to the standards reflected in the clause. It also requires the contractor to submit proof of conformance to the standard, how to obtain the standards and requires the offeror to contact the Contracting Officer if a response is not received within two weeks of the offeror's request.

We propose to remove subsections 852.211-73, Brand Name or Equal; 852.211-74, Liquidated Damages; and 852.211-75, Product Specifications, as they are all redundant to guidance contained in the FAR.

Also in part 852, we propose to add clause 852.232-70, Payments under fixed-price construction contracts (without NAS-CPM). This clause was formerly 852.236-82, Payments under fixed-price construction contracts (without NAS). This clause is revised to renumber it to 852.232-70 to reflect its prescription under part 832, and to revise the title of the "NAS" to "NAS-CPM," to clarify the list of conditions in paragraph (c) for allowing progress payments for stored supplies and equipment, and to add a new

paragraph (f) requiring notice to the contractor if retainage is to be made on a progress payment.

We propose to add clause 852.232-71, Payments under fixed-price construction contracts (including NAS-CPM). This clause was formerly 852.236-83, Payments under fixed-price construction contracts (including NAS). This clause is revised to renumber it as 852.232-71 to agree with its prescription in Part 832, to revise the title of the “NAS” to “NAS-CPM,” and to clarify the list of conditions in paragraph (c) for allowing progress payments for stored supplies and equipment, and to add a new paragraph (f) requiring notice to the contractor if retainage is to be made on a progress payment.

We propose to amend clause 852.232-72, Electronic Submission of Payment Requests, to revise the definition of “designated agency office,” and to delete a website address and system specifications.

We propose to delete the clauses 852.236-82, Payments Under Fixed-Price Construction Contracts (without NAS), and 852.236-83, Payments Under Fixed-Price Construction Contracts (including NAS) as they have been renumbered to comport with FAR arrangements and more properly belong in VAAR part 832 as noted above.

#### VAAR Part 870—Special Procurement Controls

We propose to remove section 870.112, Telecommunications equipment, as it contains the prescription and requirement for review of descriptive literature required by the clause 852.211-71, Special notice, which is proposed for removal as noted elsewhere in the preamble.

We propose to remove section 870.113, Paid use of conference facilities, as it contains internal procedural guidance not having a significant effect beyond the internal operating procedures of VA (see FAR 1.301(b)) and which will be moved to the VAAM.

#### Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the Department of Veterans Affairs Acquisition Regulation (VAAR) for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with Federal Acquisition Regulation (FAR) subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

#### Executive Order 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 this rule is not a significant regulatory action under E.O. 12866.

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 proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

Paperwork Reduction Act (PRA)

This proposed rule impacts seven existing information collection requirements associated with six Office of Management and Budget (OMB) control number approvals. The proposed actions in this rule result in multiple actions affecting some of these information collections, such as: the proposed outright removal of the information collection; no change in information collection burdens although titles and numbers may be changed or the clauses moved to other parts of the VAAR; a reduction in existing information collection burdens; and the proposed redesignation of the existing approved OMB collection numbers and the associated burden as a result of two clauses we propose to both retitle and renumber.

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi).

This proposed rule would impose the following amended information collection requirements to two of the six existing information collection approval numbers associated with this proposed 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 has been 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, if approved, they would reflect the new designation and revised titles as set forth in the preamble and the amendatory language of this proposed 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, would accordingly be removed. There is no change in the information collection burden that is associated with this proposed request. 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 will be published in a future Federal Register document.

This proposed rule would impose the following amended information collection requirements to one of the six existing information collection approval numbers associated with this proposed 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.” We propose to reflect the revised title as set forth in the preamble and the amendatory language of this proposed rule for this clause to read: 852.211-70, Equipment Operation and Maintenance Manuals, under the associated OMB control number 2900-0587. We propose to remove the reference in the existing OMB control number to the old title. There is also a reduction in the information collection burden that is associated with this proposed request. The previously approved estimated annual hourly burden is 621 hours. As a result of revising the clause and removing the requirement to develop Government-specified service manuals, the VA has eliminated an unnecessary burden on the public by making use of commercial operation and maintenance manuals just like 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. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future Federal Register document.

This proposed rule would remove 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. As a result of this proposed rule, there is a removal in the information collection burden that is associated with the removal of these two information collection requirements. 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. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future Federal Register document.

This proposed 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 proposed rule. The information collection requirements for 48 CFR 852.211-72 and 48 CFR 832.202-4 are currently approved by the 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), the 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 proposed rule would 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. The overall impact of the proposed rule would 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 would result 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, the proposed rule would not have an 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 regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### 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 proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 801

Administrative practice and procedure

Government procurement

Reporting and recordkeeping requirements

48 CFR Part 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, or designee, 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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on August 7, 2017, for publication.

Dated: February 22, 2018

---

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

For the reasons set out in the preamble, VA proposes to amend 48 CFR, chapter 8, 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.

Subpart 801.1—Purpose, Authority, Issuance

801.106 [Amended]

2. Amend the section 801.106 table columns titled “48 CFR part or section where identified and described” and “Current OMB control number” to—
  - a. Remove the reference to section 832.006-4 and OMB Control Number 2900-0668.
  - b. Remove the reference to section 852.211-71 and OMB Control Number 2900-0588.
  - c. Remove the reference to section 852.211-73 and OMB Control Number 2900-0585.
  - d. Remove “852.236-82 through”;
  - e. Add the reference to sections 852.232-70 and 852.232-71 and OMB control number 2900-0422 on the same line.

\* \* \* \* \*

SUBCHAPTER B— [Amended]

3. The title 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, 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 subpart:

- (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 [Removed].

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) and shall carry out the responsibilities of the Secretary or designee in FAR 32.006-4(b). To determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(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 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:

##### 832.111-70 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].

17. Section 832.201 is removed.

18. 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.

19. 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

20. 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.

21. Amend section 832.404 by revising paragraph (b) 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—5 [Removed and reserved].

22. Subpart 832.5 is removed and reserved.

Subpart 832.8 [Removed and reserved].

23. Subpart 832.8 is removed and reserved.

Subpart 832.9—Prompt Payment

832.904 [Redesignated as 832.904-70].

24. 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, dated September 14, 2011, 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.

832.11 [Removed and reserved].

25. Subpart 832.11 is removed and reserved.

26. 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

27. 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. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

Subpart 852.2—Text of Provisions and Clauses

28. 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 (DATE)

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].

29. Section 852.211-71 is removed and reserved.

30. 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 (DATE)

(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 [Removed and reserved].

852.211-74 [Removed and reserved].

852.211-75 [Removed and reserved].

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

32. 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 Method (without NAS-CPM)"

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(WITHOUT NAS-CPM) (DATE)

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 subparagraph shall be construed as limiting the Contracting Officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The Contractor shall submit a schedule of cost to the Contracting Officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the Contractor for work completed. This schedule shall show cost by the 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 subparagraph (b)(5). The percentages listed below are proportions of the cost listed in the Contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the Contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

<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 (DATE). 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.

33. 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) (DATE)

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 subparagraph shall be construed as limiting the Contracting Officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The Contractor shall submit a schedule of costs in accordance with the requirements of section "Network Analysis System — 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 section. The percentages listed below 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 (DATE). 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.

34. 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 (DATE)

(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.

(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 below, 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 [Removed and reserved].

852.236-83 [Removed and reserved].

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

#### PART 870—SPECIAL PROCUREMENT CONTROLS

36. 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 [Removed]

870.113 [Removed]

37. Remove sections 870. 112 and 870.113.

[FR Doc. 2018-04002 Filed: 3/23/2018 8:45 am; Publication Date: 3/26/2018]