



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 829, 846, 847, 852, and 870

RIN 2900-AQ04

VA Acquisition Regulation: Taxes; Quality Assurance; Transportation; Solicitation Provisions and Contract Clauses; and Special Procurement Controls

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(VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate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 These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors.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 Taxes; Quality Assurance; Transportation; 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 April 25, 2018, VA published a proposed rule in the Federal Register (83 FR 17979) which announced VA's intent to amend regulations for VAAR Case RIN 2900-AQ04 (parts 829, 846, and 847). In particular, this final rule revises the 829 authorities to include the applicable U.S. code citations where the Secretary of the Treasury has exempted spirits and alcohol purchases by the Federal government, pursuant to 26 U.S.C. 5214(a)(2), 26 U.S.C. 5271, and 26 U.S.C. 7510; removes section 829.202-70, Tax exemptions for alcohol products, updates and moves it to the VAAM; adds a new section to provide the legislative authorities for withdrawal of distilled spirits from bonded premises free of tax or without payment of tax by, and for the use of, the VA; removes section 829.302, Application of State and local taxes to the Government, to the VAAM; removes 829.302-70, Purchases made from patients' funds, and the clause it prescribes, 852.229-70, Sales or Use Taxes.

In part 846, Quality Assurance, this rule adds a definition of "rejected goods" as used in a revised clause; revises subpart 846.3 to prescribe clauses 852.236-74, Inspection of Construction, 852.246-71, Rejected Goods, 852.246-72, Frozen Processed Foods, 852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements, and 852.246-76, Purchase of Shellfish; it reduces subpart 846.4 to three sections, 846.408-70, Inspection of subsistence, 846.470, Use of commercial

organizations for inspections and grading services, and 846.471, Food service equipment; it removes a warranty clause because there are sufficient FAR warranty clauses that could be used; removes policy requiring USDA inspections for subsistence since the Department of Agriculture no longer requires this type of inspection; removes coverage requiring inspection of repairs for properties under the Loan Guaranty Program and Direct Loan Programs, as such sections are unnecessary given that a private contractor performs such inspection and repair functions on VA's behalf; and provides coverage to state VA's policy regarding guarantee period services.

This rule adds guidance in part 847 to contracting officers for VA transportation contracts and transportation-related services and subsequent payments on those contracts; provides guidance on contractual requirements for insurance provisions and contractor personnel performing on VA transportation contracts; provides consignment instructions; and adds a clause providing packing instructions to ensure acceptance by common carriers and safe delivery at destination.

This rule also removes all remaining sections of part 870 as the guidance included therein was either moved to other parts, out of date, or duplicative of the FAR.

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 June 25, 2018 and VA received no comments. This document adopts as a final rule the proposed rule published in the Federal Register on April 25, 2018, with minor formatting and/or 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 contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

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 overall impact of the 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 businesses will 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 final rule will 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.

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 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 not subject to the requirements of E.O. 13771 because this final rule is expected to result in no more than *de minimis* costs.

List of Subjects

48 CFR Part 829

Government procurement, Taxes.

48 CFR Part 846

Government procurement.

48 CFR Part 847

Government procurement, Transportation.

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: September 14, 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 829, 846, 847, 852, and 870 as follows:

PART 829—TAXES

1. The authority citation for part 829 is revised to read as follows:

Authority: 26 U.S.C. 5214(a)(2), 5271, 7510; 40 U.S.C. 121(c); 41 U.S.C. 1303(a)(2); 41 U.S.C. 1702 and 48 CFR 1.301-1.304.

2. Subpart 829.2 is revised to read as follows:

Subpart 829.2—Federal Excise Taxes

829.203 Other Federal tax exemptions.

829.203-70 Tax exemptions for alcohol products.

(a) General. (1) Pursuant to 26 U.S.C. 5214(a)(2) and 26 U.S.C. 5271, VA may purchase spirits using a tax exemption as provided by Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR parts 1 through 39). As stated in 27 CFR 19.426, agencies of the United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on form TTB F 5150.33 or must have a previously issued permit on ATF Form 1444.

(2) When purchasing spirits under a tax exemption, the contracting officer shall indicate in the contract document the basis for the exemption and make a copy of the permit available to the contractor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated or as directed by the contracting officer.

(3) Department of Veterans Affairs activities that require spirits free of tax for beverage purposes under 26 U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee.

(b) Specially denatured spirits or spirits free of tax for nonbeverage purposes.

Contracting officers may make purchases of excise tax-free spirits, including denatured alcohol and specially denatured alcohol only from qualified distillery plants or bonded dealers.

(1) Permits previously issued on Alcohol, Tobacco, and Firearms (ATF) Form 1444, Tax-Free Spirits for Use of United States, remain valid until surrendered or cancelled.

(2) A copy of the current ATF Form 1444 or TTB Form 5150.33 shall be made available to the supplier with the initial order. The permit number only needs to be referenced on any future orders with the same supplier.

(c) Wine. No tax exemption form or ATF/TTB permit is required for the tax-free procurement of wine from bonded wine premises. The purchase order must show the kind, quantity, and alcohol content of the wine and must state the purpose for which wine is to be used (see 27 CFR 24.293). An extra copy of a properly executed purchase order may be furnished to the bonded wine premises from which wine is purchased to facilitate record keeping. The order must be signed by the head of the contracting activity or their designee.

3. Subpart 829.3 is revised to read as follows:

Subpart 829.3—State and Local Taxes

829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (HCA).

PART 846—QUALITY ASSURANCE

4. The authority citation for part 846 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.

5. Subpart 846.1 is added to read as follows:

Subpart 846.1—General

846.101 Definition.

As used in this part—

Rejected goods means supplies and/or equipment failing to meet contractual terms and conditions and/or generally accepted quality standards that may be returned by the Government at the contractor's risk and expense.

6. Subpart 846.3 is revised to read as follows:

Subpart 846.3—Contract Clauses

Sec.

846.312 Construction contracts.

846.370 Clauses for supplies, equipment or perishable goods.

846.370-1 Rejected goods.

846.370-2 Frozen processed foods.

846.370-3 Noncompliance with packaging, packing, and/or marking requirements.

846.370-4 Purchase of shellfish.

Subpart 846.3—Contract Clauses

846.312 Construction contracts.

The contracting officer shall insert the clause at 852.236-74, Inspection of Construction, in solicitations and contracts for construction that include the FAR clause at 52.246-12, Inspection of Construction.

846.370 Clauses for supplies, equipment or perishable goods.

846.370-1 Rejected goods.

The contracting officer shall insert the clause at 852.246-71, Rejected Goods, in solicitations and contracts for the acquisition of supplies, equipment or perishable goods. Perishable goods include such items as packing house and dairy products, bread and bakery products, fresh and frozen fruits, and vegetables.

846.370-2 Frozen processed foods.

(a) The contracting officer shall insert the clause at 852.246-72, Frozen Processed Foods, in solicitations and contracts for frozen processed foods.

(b) The following frozen processed food products must contain a label that complies with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), which requires all ingredients be listed in accordance with their predominance order:

(1) Frozen processed food products that contain meat, poultry, or a significant proportion of eggs.

(2) Frozen processed food products that contain fish or fish products.

(3) Frozen bakery products.

(c) All procured frozen processed food products that contain meat, poultry or a significant proportion of eggs must meet the following requirements:

(1) The products must be processed or prepared in plants operating under the supervision of the Department of Agriculture (USDA).

(2) The product must be inspected and approved in accordance with USDA regulations governing meat, poultry, or egg inspection. A label or seal that indicates compliance with USDA regulations, affixed to the container, will be accepted as evidence of compliance.

(d) All procured frozen processed food products that contain fish or fish products must meet the following requirements:

(1) The product must be processed or prepared in plants or vessels, sanitarily inspected, approved, and certified by the United States Department of Commerce (USDC). The products are listed in USDC's publication "USDC Approved Establishments" under U.S. Establishments Approved for Sanitation and for Producing USDC Inspected Fishery Products. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or USDC seal indicating compliance with USDC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the conditions in paragraph (d)(1) of this section were not met (e.g., no seal), the shipment may be lot-inspected by the USDC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(e) Producers of frozen bakery products that ship products in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, the product must be verified as shipped interstate or that the producer ships products to other purchasers interstate.

846.370-3 Noncompliance with packaging, packing, and/or marking requirements.

The contracting officer shall insert the clause at 852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with FAR 12.302(c).

846.370-4 Purchase of shellfish.

(a) The U.S. Food and Drug Administration (FDA) at <http://www.fda.gov> provides quality assurance seafood safety guidelines.

(b) The contracting officer shall insert the clause at 852.246-76, Purchase of Shellfish, in solicitations and contracts for shellfish.

7. Subpart 846.4 is revised to read as follows:

Subpart 846.4—Government Contract Quality Assurance

Sec.

846.408-70 Inspection of subsistence.

846.470 Use of commercial organizations for inspections and grading services.

846.471 Food service equipment.

Subpart 846.4—Government Contract Quality Assurance

846.408-70 Inspection of subsistence.

(a) The contracting officer shall indicate the time and place of inspection in the solicitation.

(b) The contracting officer shall also provide in the solicitation that the contractor is

responsible for all of the following:

- (1) Arranging and paying for inspection services.
 - (2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.
 - (3) Assuring that the certificate, or copy, accompanies the shipment.
 - (4) Furnishing samples for inspection at the contractor's expense.
 - (5) Indicating the address where inspection will occur.
- (c) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

846.470 Use of commercial organizations for inspections and grading services.

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following exist:

- (a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.
- (b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.
- (c) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.
- (d) The services may be performed without direct Government supervision.

846.471 Food service equipment.

- (a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center sources must meet requirements set forth by NSF

International (NSF) at <http://www.nsf.org>.

(b) The contracting officer will ensure that the following language is placed in the solicitation to assert that the equipment meets NSF standards:

The Government will accept an affixed NSF label and/or documentation of the NSF Certification from the contractor as evidence that the subject equipment meets NSF Sanitation standards.

8. Subpart 846.7 is revised to read as follows:

Subpart 846.7—Warranties

846.702-70 Guarantee period services and specifications.

(a) Guarantee period of services are associated with preserving and protecting a specified piece of contractor-installed equipment that is guaranteed under a construction contract. Specifications for certain high-dollar or traditionally troublesome equipment are designed to allow for the original installer of the equipment to service the equipment throughout the guaranty period.

(b) Guarantee period services are not the same as the 1-year general construction guaranty clause found at FAR clause 52.246-21, Warranty of Construction.

(c) The contracting officer may determine, when in the best interest of VA that guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and ensure that the equipment performs as guaranteed.

(d) When the determination is made under paragraph (c) of this section, the contracting officer shall include the guarantee period of services as a separately priced contract line item number (CLIN) in solicitations and contracts.

(e) The contracting officer shall insert the clause at 852.246-75, Warranty of Construction—Guarantee Period Services, in solicitations and contracts for construction that include the FAR clause 52.246-21, Warranty of Construction, and that also include guarantee period services.

(f) In accordance with the approved VA specifications, the following types of equipment contain the guarantee period services specifications. The following represents a sampling of these specifications.

(1) Division 14—Conveying Equipment. (i) Electric Dumbwaiters Geared Traction and Winding Drum (VA 14 12 11).

(ii) Electric Traction Elevators (VA 14 21 00).

(iii) Traction Cartlift (VA 14 21 11).

(iv) Hydraulic Elevators (VA 14 24 00).

(v) Hydraulic Cartlift (VA 14 24 11).

(2) Division 27—Communications. (i) Public Address and Mass Notification Systems (VA 27 51 16).

(ii) Intercommunication and Program Systems (VA 27 51 23).

(g) The construction contractor shall require the original installer of the equipment, which is normally a subcontractor, to provide the guarantee period services.

PART 847—TRANSPORTATION

9. The authority citation for part 847 is revised to read as follows:

Authority: 38 U.S.C. 513; 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; 41 CFR part 102-117; and 48 CFR 1.301-1.304.

10. Subpart 847.2 is added to read as follows:

Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

847.207 Solicitation provisions, contract clauses, and special requirements.

847.207-8 Government responsibilities.

847.207-70 VA solicitation provisions, contract clauses, and special requirements.

Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

847.207 Solicitation provisions, contract clauses, and special requirements.

847.207-8 Government responsibilities.

Transportation payments are audited by the Traffic Manager, to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR part 102-118.

847.207-70 VA solicitation provisions, contract clauses, and special requirements.

(a) Insurance under patient transportation contracts. The contracting officer shall ensure that all the proper certificates of insurance are submitted to perform on the contract, as outlined in the solicitation, and subsequently included in the contract file. In accordance with 828.306, the contracting officer shall insert the provision at 852.228-71,

Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service. When contracting for these services, consider using requirements language such as the following:

(1) Written proof of insurance coverage as required and outlined in the solicitation is required prior to award of any contract. Coverage must be maintained continually through the life of the contract.

(2) Within 10 days of notification of acceptance and pending award of contract, the contractor shall furnish to the contracting officer a certificate of insurance which shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day advance written notice of cancellation or change is furnished to the contracting officer.

(3) Within 10 days of notification of acceptance and pending award of contract, and prior to award of a contract, the contractor shall furnish to the contracting officer a copy of the contractor's current and valid Worker's Compensation certificate.

(b) Contractor personnel. The contracting officer shall ensure that contractor personnel have the appropriate level of training, experience, licensure, and pertinent qualifications to ensure patient safety. When contracting for these services, consider using requirements language such as the following:

(1) All contractor personnel performing contract services shall meet the qualifications as specified in the contract, as well as any qualifications required by Federal, State, County, and local Government entities from the place in which they operate. Contractor personnel shall meet these qualifications at all times while performing contract services.

(2) During the contract period of performance, if the contractor proposes to add-on, or replace personnel to perform contract services, the contractor shall submit required evidence of training, certifications, licensing, background, and security clearances, and any other applicable qualifications to the designated contracting officer's representative (COR). At no time shall the contractor utilize add-on or replacement personnel to

perform contract services who do not meet the qualifications under the terms and conditions of the contract.

(3) Records of contractor personnel qualifications and eligibility to perform on the contract must be current and maintained throughout the life of the contract, and be made available for inspection upon request. The contractor shall forward to the contracting officer, on an annual basis, a list of contractor employees listing the employees name, position(s), and licenses and/or certifications and their current certification number. This annual statement of driver competency must include any advanced certifications, such as Advanced Cardiac Life Support or specialized training to assist and secure patients by stretcher or wheelchair, as applicable.

(4) Within seven (7) days after receipt of award notification, the contractor shall provide evidence of required training, certifications, licensing and any other qualifications of any personnel who will be performing services under the contract. The initial documentation shall be provided to the contracting officer and COR.

(c) Contracts must include requirements to report vehicle accidents and incidents to the contracting officer with a formal accident report.

(d) Contracts for ambulance services must require that the contractor meet the current specifications of Federal Specification KKK-A-1822E, "Star of Life Ambulance" standard.

(e) Contracts must include requirements to ensure patient safety is maintained through the consistent practice of securing patient care equipment, other cargo, and vehicles, and ensure that security of patients in vehicles is established and observed when transportation needs are either primary or secondary in the actual performance of the

contract. When contracting for these services, consider using requirements language to ensure that patient transportation meets industry standards for transporting patients based on the patient's condition/needs (e.g., wheelchair, ambulatory, on stretcher, etc.).

11. Subpart 847.3 is revised to read as follows:

Subpart 847.3—Transportation in Supply Contracts

847.302 Place of delivery—f.o.b. point.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305-10 Packing, marking, and consignment instructions.

847.305-70 Potential destinations known but quantities unknown.

847.305-71 VA contract clauses.

847.306 Transportation factors in the evaluation of offers.

847.306-70 Records of claims.

Subpart 847.3—Transportation in Supply Contracts

847.302 Place of delivery—f.o.b. point.

The contracting officer shall insert clause 852.247-71, Delivery Location, or a clause substantially the same as the clause at 852.247-71, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305-10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert clause 852.247-72, Marking Deliverables, or a clause substantially the same as 852.247-72 in solicitations and contracts if special marking on deliverables are required.

(b) The contracting officer shall insert the clause at 852.247-73, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

847.305-70 Potential destinations known but quantities unknown.

When the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an f.o.b. origin basis, the evaluation of bids must follow specific procedures. In these instances, the contracting officer shall insert clause 852.247-70, Determining Transportation Costs for Evaluation of Offers, or a clause substantially the same as clause 852.247-70. By inserting this clause, each bid is placed on an equal basis, even though specific quantities required by each facility cannot be predetermined. The contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload.

847.305-71 VA contract clauses.

(a) The contracting officer shall insert clause 852.247-74, Advance Notice of Shipment, or a clause substantially the same as 852.247-74, in solicitations and contracts when the f.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert clause 852.247-75, Bills of Lading, or a clause substantially the same as clause at 852.247-75, in f.o.b. origin solicitations and contracts.

847.306 Transportation factors in the evaluation of offers.

847.306-70 Records of claims.

When contracting for transportation, and consistent with FAR 15.304, contracting officers should consider using offerors' record of claims involving loss or damage as an evaluation factor or subfactor.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citation for part 852 continues 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.

852.229-70 [Removed and Reserved]

13. Section 852.229-70 is removed and reserved.

852.246-70 [Removed and Reserved]

14. Section 852.246-70 is removed and reserved.

15. Section 852.246-71 is revised to read as follows:

852.246-71 Rejected Goods.

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

REJECTED GOODS (OCT 2018)

(a) Supplies and equipment. Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the

Contractor's address at the Contractor's risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the Contractor.

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

(End of clause)

16. Section 852.246-72 is revised to read as follows:

852.246-72 Frozen Processed Foods.

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

FROZEN PROCESSED FOODS (OCT 2018)

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

(End of clause)

17. Section 852.246-73 is revised to read as follows:

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

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

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

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

(End of clause)

852.246-74 [Removed and Reserved]

18. Section 852.246-74 is removed and reserved.

19. Section 852.246-75 is revised to read as follows:

852.246-75 Warranty of Construction—Guarantee Period Services.

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

WARRANTY OF CONSTRUCTION—GUARANTEE PERIOD SERVICES (OCT 2018)

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

Should the Contractor fail to complete the work or fail to proceed promptly to provide guarantee period services after notification by the Contracting Officer, the Government may, subject to the default clause contained at FAR 52.249-10, Default (Fixed-Price Construction), and after allowing the Contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work)

that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damages to the Government resulting from the Contractor's refusal or failure to complete the work within this specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

20. Section 852.246-76 is added to read as follows:

852.246-76 Purchase of Shellfish.

As prescribed in 846.370-4 insert the following clause:

PURCHASE OF SHELLFISH (OCT 2018)

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

(End of clause)

21. Section 852.247-70 is revised to read as follows:

852.247-70 Determining Transportation Costs for Evaluation of Offers.

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

DETERMINING TRANSPORTATION COSTS FOR EVALUATION OF OFFERS (OCT
2018)

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

Anticipated Demand

<u>Area destination</u>	<u>Factor</u>
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	<u>5</u>

(End of provision)

22. Section 852.247-71 is added to read as follows:

852.247-71 Delivery Location.

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

DELIVERY LOCATION (OCT 2018)

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

(End of clause)

23. Section 852.247-72 is added to read as follows:

852.247-72 Marking Deliverables.

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

MARKING DELIVERABLES (OCT 2018)

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

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

(End of clause)

24. Section 852.247-73 is added to read as follows:

852.247-73 Packing for Domestic Shipment.

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

PACKING FOR DOMESTIC SHIPMENT (OCT 2018)

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

(End of clause)

25. Section 852.247-74 is added to read as follows:

852.247-74 Advance Notice of Shipment.

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

ADVANCE NOTICE OF SHIPMENT (OCT 2018)

_____ [Insert number of work days] work days prior to shipping item(s)

_____ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to _____

[Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

26. Section 852.247-75 is added to read as follows:

852.247-75 Bills of Lading.

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

BILLS OF LADING (OCT 2018)

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

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

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

Contract or Order Number: _____

Destination: _____."

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

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

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

(End of clause)

852.270-2 [Removed]

27. Section 852.270-2 is removed.

852.270-3 [Removed]

28. Section 852.270-3 is removed.

PART 870—[REMOVED AND RESERVED]

29. Under the authority of 48 CFR 1.301 through 1.304, part 870 is removed and reserved.

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