for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Volatile organic compounds, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 30, 2001.

Norman Neidergang,

Acting Regional Administrator, Region 5.

[FR Doc. 01–14377 Filed 6–6–01; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900–AI71

VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule and promulgation of a new proposed rule.

SUMMARY: This document withdraws the proposed rule concerning simplified acquisition procedures for health-care resources published in the **Federal Register** on November 9, 1998, and promulgates a new proposed rule concerning simplified acquisition procedures for health-care resources. This new proposed rule document would amend the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space, pursuant to 38 U.S.C. 8151–8153. Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, authorized VA to prescribe simplified procedures for the procurement of health-care resources. This proposed rule prescribes those procedures.

DATES: Comments on this proposed rule should be submitted on or before August 6, 2001 to be considered in the formulation of the final rule.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to ''OGCRegulations@mail.va.gov''. Comments should indicate that they are submitted in response to ''RIN 2900–AI71.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Dennis Foley, (202) 273–9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273–8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On November 9, 1998, we published in the **Federal Register** (63 FR 60256) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR), pursuant to 38 U.S.C. 8151–8153, to establish simplified procedures for the competitive acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. This document withdraws the proposed rule of November 9, 1998. In its place, we are promulgating a new proposed rule concerning the same subject matter. The new proposed rule is changed from the withdrawn proposed rule as explained below. Also, this document addresses the public comments that we received in response to the withdrawn proposed rule. Comments were solicited concerning the November 9, 1998, proposal for 60 days, ending January 9, 1999.

Based on the public comments received, we have determined that a revised proposed rule is necessary to more fully address the potential impact of the proposed rule on small business. In this regard, we have added an initial regulatory flexibility analysis.

Currently, the acquisition of health-care resources that consist of commercial services or the use of medical equipment or space is governed by the VAAR and the Federal Acquisition Regulation (FAR). Statutory provisions at 38 U.S.C. 8153 (Pub. L. 104–262) specifically authorize the Secretary of Veterans Affairs, after consultation with the Administrator for Federal Procurement Policy, to establish simplified procedures for the competitive procurement of such health-care resources. VA has consulted with the Administrator for Federal Procurement Policy and VA proposes to establish simplified procedures as set forth in this document. These proposed simplified procedures are applicable only to acquisitions conducted by the Veterans Health Administration (VHA), one of three administrations that comprise the Department of Veterans Affairs.

Under the provisions of Pub. L. 104–262, procurements under the simplified procedures may be conducted ''without regard to any law or regulation that would otherwise require the use of competitive procedures.'' Accordingly, the competitive procedures of any laws and regulations (including the competitive procedures of FAR and VAAR and their underlying laws) would be superseded by the simplified procedures. However, under the provisions of Pub. L. 104–262, with certain exceptions, the simplified procedures are required to ''permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.'' This allows VA to limit competition to the extent it determines reasonable for the circumstances of each particular acquisition. Consistent with the principles set forth above, this document proposes to establish a new VAAR Part 873 setting forth such simplified procedures.

Under the provisions of 38 U.S.C. 8153, health-care resources consisting of commercial services, the use of medical equipment or space, or research, acquired from an institution affiliated with VA in accordance with 38 U.S.C.

7302, including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), blood banks, organ banks, or research centers, may be procured without regard to any law or regulation that would otherwise require the use of competitive procedures. The provisions at new VAAR 873.104 contain a statement explaining this sole source acquisition authority. This authority, which is in accordance with statute, is not dependent upon this rulemaking.

This rule applies only to the acquisition of health-care resources that are commercial services or the use of medical equipment or space. Thus, the proposed rule would apply only to acquisitions conducted by VHA in support of the medical care programs of VA. It would not apply to acquisitions of commercial services conducted by the Veterans Benefits Administration or the National Cemetery Administration. The following discussions only apply to VHA acquisitions of health-care resources.

Proposed section 873.101, Policy, would provide that the procedures set forth in Part 873 would apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures would be used in conjunction with FAR, but VAAR Part 873 would take precedence over FAR and other parts of VAAR. Currently, VAAR implements and supplements FAR. However, Pub. L. 104–262 grants VA authority to procure health-care resources consisting of commercial services or the use of medical equipment or space ''without regard to any other law or regulation that would require the use of competitive procedures * * *.'' Therefore, it is necessary to have Part 873 of VAAR take precedence over FAR and any other part of VAAR.

Proposed section 873.102 would add definitions for ''commercial service,'' ''health-care providers,'' and ''health-care resource.'' These definitions restate provisions of 38 U.S.C. 8152 and 8153. Previously, because of limitations under 38 U.S.C. 8153 which were in effect prior to Pub. L. 104–262, procurements under the authority of 38 U.S.C. 8153 were limited to ''specialized medical resources.'' Consistent with the new definitions, the simplified procedures are more expansive and would govern procurements of all commercial services or the use of medical equipment or space, not just those that are considered to be ''specialized medical resources.''

FAR 8.001(a)(2) sets forth four levels of priority for the acquisition of services. These are, in descending order of priority, (i) services available from the Committee for Purchase from People who are Blind or Severely Disabled; (ii) mandatory Federal Supply Schedules (FSS); (iii) optional use FSS; and (iv) Federal Prison Industries, Inc., or commercial sources (including educational and non-profit institutions). Proposed section 873.103 would exempt acquisitions under this proposed rule from the provisions of FAR 8.001(a)(2) regarding the lowest three levels of priority. For VA, there are no longer any mandatory use FSS (the highest level of priority of the three levels proposed for elimination), so elimination of this priority level has no impact. As to the second level, optional use FSS, even without the priority levels, VA contracting officers would still be able to place delivery orders against optional use FSS contracts in accordance with FAR 8.404 without seeking competition. However, they would not be required to do so by the list of priority sources. Under the proposed rule, it would be at the contracting officer's discretion whether or not to issue a delivery order against an optional use FSS contract or to seek competition. This is necessary to ensure that VA has maximum flexibility to seek the highest quality services available, either from optional use FSS contractors or through a competitive acquisition. If the contracting officer does seek competition, contractors formerly at the lowest level of priority (i.e., commercial sources) would then be able to compete for those services. It is not proposed to affect the priority status for the acquisition of services available from the Committee for Purchase from People who are Blind or Severely Disabled, as required by the Javits-Wagner-O'Day (JWOD) Act. JWOD Act programs offer a valuable source of services for VA and have proven to be highly beneficial for both VA and program participants. The JWOD Act programs support VA's and other Federal Government agencies' procurement needs and generate employment and training opportunities for people who are blind or have other severe disabilities. It is in the best interest of the Government to continue to support these valuable programs.

Proposed section 873.104, paragraphs (a) and (b), would restate the authority provided in the Act to acquire health-care resources that are commercial services or the use of medical equipment or space from entities affiliated with VA, in accordance with 38 U.S.C. 7302, or approved entities associated with an affiliate (entities will be approved if determined legally to be associated with affiliated institutions), on a sole source basis without public notice and without further justification. Proposed section 873.104, paragraph (c), would provide that, on VA acquisitions of commercial services or the use of medical equipment or space from other sources, contracting officers would be required to seek competition to the maximum extent practicable. This is consistent with provisions of the Act, which provide that procurements may be conducted without regard to any law or regulation that would otherwise require use of competitive procedures. Competition to the maximum extent practicable is required to ensure that VA's acquisitions of commercial services or the use of medical equipment or space are conducted in an efficient and expeditious manner. Proposed section 873.104, paragraph (d), restates the requirements of the Act that sole source acquisitions from sources other than affiliates or approved associates of affiliates (entities will be approved if determined legally to be associated with affiliated institutions) be justified and approved.

Proposed section 873.105 would reiterate the importance of acquisition planning. The section would impose a requirement to form an acquisition team for high dollar value acquisitions (acquisitions exceeding $100,000). The team would be required to assure that the acquisition is properly coordinated and managed and to conduct market research. To promote streamlining, the section would authorize the use of a simplified process for documenting the acquisition plan. Under this process, contracting officers would obtain approval of and document the acquisition approach through the conduct of an acquisition strategy meeting in lieu of a written acquisition plan. These changes are necessary to ensure that high dollar value acquisitions are properly planned and coordinated, while still providing a streamlined process for documenting the contract file.

Proposed section 873.106 would exempt VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space from most of the market research requirements of FAR Part 10 but would provide optional market research techniques tailored specifically for use in acquiring commercial services or the use of medical equipment or space. This change is necessary to simplify market research while ensuring that contracting officers have a full range of techniques available specifically tailored for use in

conducting market research when acquiring commercial services or the use of medical equipment or space.

Proposed paragraph (a) of section 873.107 would require the contracting officer to set aside acquisitions of health-care resources for small business concerns if, through market research, the contracting officer determines that there is a reasonable expectation that reasonably priced offers would be received from two or more responsible small business concerns. This proposed section would also provide additional authority, over and above that found at FAR 19.502, for waiving the requirement for small business set-asides. FAR 19.502 currently provides that contracting officers can elect to not set aside a procurement if, generally, the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns at fair market prices. In addition to that authority in FAR, under this proposed rule, the head of the contracting activity would have the authority to approve a waiver from the requirement to set aside a procurement of health-care resources, based on a determination that it is in the best interest of the Government. This provision is necessary to ensure that VA can procure health-care resources consisting of commercial services or the use of medical equipment or space from the highest quality sources while still supporting small business concerns to the maximum practicable extent.

The rule would make certain changes to the administration of VA's small business program as it applies to the acquisition of health-care resources to reflect the fast-moving health-care market. For example, proposed paragraph (b) of section 873.107 would establish a streamlined process for handling disagreements between VA and the Small Business Administration regarding whether a procurement should be set aside for small business. These streamlined procedures would not alter VA's ongoing commitment to small business participation in its acquisitions of health-care resources. Nor would they affect efforts to mitigate any potential negative impacts of contract consolidations on small businesses' ability to secure work. VA's Office of Small and Disadvantaged Business Utilization and Office of Acquisition and Materiel Management would jointly monitor the impact of the new procedures on small business participation to ensure opportunities are available for competitive small businesses.

Paragraph (c) of section 873.107 restates VA's intent to follow the FAR regarding the SBA 8(a) program. Paragraph (d) provides that VA's Office of Small and Disadvantaged Business Utilization and SBA's Office of Industrial Assistance shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency.

FAR Part 5 currently requires, with certain exceptions, that an acquisition with a value exceeding $25,000 be synopsized in the Governmentwide point of entry (GPE) (and, until January 1, 2002, in the Commerce Business Daily (CBD)) for specified periods of time and states what must be included in the announcement. Proposed section 873.108 would: exempt VA acquisitions of health-care resources consisting of commercial services or the use of medical equipment or space below $100,000 from this requirement; modify the requirement for publication of acquisitions above $100,000 to only require public announcement, utilizing a medium designed to obtain competition to the maximum extent practicable; set the time requirements for announcement to be a ''reasonable time''; and modify what must be included in the announcement. The medium to be used for announcements could be the GPE (FedBizOpps, http://www.fedbizopps.gov) or any other means, as appropriate, depending on the complexity of the acquisition. 38 U.S.C. 8153 authorizes VA to conduct procurements for health-care resources that are commercial services or the use of medical equipment or space without regard to any law or regulation that would otherwise require the use of competitive procedures. In accordance with that authority, this section also proposes to exempt acquisitions from affiliates and entities associated with affiliates and sole source acquisitions of medical services from other sources from the requirement for publication of notice in the GPE. These provisions would streamline and simplify VA's acquisitions of commercial services or the use of medical equipment or space.

Proposed paragraphs (a) and (b) of section 873.109 would emphasize that the contracting officer (rather than the team) is the selecting official and would provide guidance to contracting officers on statements of work and specifications. FAR requires certain documentation in contract files. Proposed paragraph (c) would provide simplified documentation requirements to be used in lieu of the FAR requirements. FAR requires specific time frames for announcing solicitations and procurement opportunities to the public and provides, for commercial solicitations, that bids or proposals received late shall not be considered. The FAR does not specifically address late quotations. Proposed paragraph (d)(1) would replace FAR announcement time requirements with a ''reasonable'' time requirement and paragraph (d)(2) would allow the contracting officer to accept late quotations or proposals if late receipt is determined by the contracting officer to be in the best interest of the Government. Late bids received in response to an invitation for bid (IFB) would not be considered and the FAR provisions regarding late bids would still apply. FAR provides certain minimum requirements that a contracting officer must meet before a solicitation may be canceled. Proposed paragraph (e) would exempt VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space from those minimum requirements and would provide that a contracting officer could cancel a solicitation if cancellation is determined to be in the best interest of the Government. All of these changes are proposed for the purpose of streamlining and simplifying VA's acquisitions of commercial services or the use of medical equipment or space.

Proposed section 873.110, paragraphs (a) through (e), would provide guidance to contracting officers on when to use the provisions and clauses in Part 852 of VAAR in VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space. Paragraph (f) would propose to require use of FAR clause 52.207–3, Right of First Refusal, and the VAAR clause at 852.207–70, Report of employment under commercial activities, in a solicitation in which current VA employees might be displaced as a result of contract award. The FAR clause ensures that those employees have a right of first refusal to any employment openings created with the contractor as a result of the contract award. The VAAR clause requires the contractor to report employment openings and progress in hiring former VA employees. These requirements are necessary to protect VA employees and to reduce the cost of contract award by reducing or avoiding unemployment compensation costs.

FAR places certain restrictions on when each type of acquisition procedure can be used. For instance, a request for quotation (RFQ) can be used to solicit quotations for non-commercial service acquisitions costing up to $100,000 and, until January 1, 2002, for commercial service acquisitions costing up to $5 million. Proposed section

873.111 would allow use of the RFQ process for any acquisition of commercial services or the use of medical equipment or space conducted under this VAAR part, regardless of dollar value. This change is necessary to simplify VA's acquisition of commercial services or the use of medical equipment or space and to provide maximum flexibility to contracting officers.

Until January 1, 2002, FAR requires the use of full and open competition for commercial service acquisitions exceeding $5 million unless other statutory authority exists to limit competition. If this authority is not extended, after January 1, 2002, the FAR requirement to use full and open competition will apply to such acquisitions exceeding $100,000. Paragraph (a)(1) of section 873.111 would provide, for VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space, that competition to the maximum extent practicable may be used in lieu of full and open competition, regardless of the dollar value of the acquisition. Proposed paragraph (a)(2) would exempt VA acquisitions of commercial services or the use of medical equipment or space from any dollar value restrictions in FAR on the use of RFQs, allowing VA to use the RFQ process for all acquisitions of health-care resources that are commercial services or the use of medical equipment or space, regardless of the dollar value of the procurement. These changes are necessary to simplify and streamline VA's acquisition of commercial services or the use of medical equipment or space by allowing use of the RFQ process in any circumstance.

Proposed paragraph (b) of section 873.111 is advisory only and would provide that the procedures of FAR Part 14 would continue to be used for VA sealed bid acquisitions of commercial services or the use of medical equipment or space. Proposed paragraph (c) of section 873.111 would provide that the negotiation procedures of FAR Parts 12, 13, and 15 would be used for negotiated acquisitions of commercial services or the use of medical equipment or space, except as modified in VAAR Part 873. This paragraph is also advisory.

Proposed paragraph (d) of section 873.111 would provide an alternative negotiation procedure using a multiphase negotiation technique. This would supersede current FAR provisions for an advisory multi-step process that does not allow the Government to exclude offerors that are unlikely to be viable competitors. Multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Under a multiphase acquisition, VA would seek limited information with vendors' first submissions, make one or more down-selects based on the initial information, and request full proposals only from the offerors remaining. This technique would ensure that only those firms most likely to receive awards would be required to expend the time and effort to prepare a full proposal. It would simplify and streamline the acquisition process and would save both vendors and the Government time and money.

Proposed paragraph (e) of section 873.111 would provide two additional alternative negotiation techniques for use by VA in acquiring commercial services or the use of medical equipment or space under this proposed rule. The first technique would allow the contracting officer to indicate to all offerors, or to one or more offerors, a price, contract term or condition, commercially available feature, or other requirement that the offeror or offerors will have to improve upon or meet, as appropriate, in order to remain competitive. The second technique would allow contracting officers to post prices received on offers electronically or otherwise, without disclosing the identity of the offerors, and allow offerors to revise their prices based on the posted information. These procedures are necessary to assist contracting officers in procuring the highest quality health-care services at best value prices.

Proposed section 873.112 addresses the selection of evaluation requirements that VA contracting officers must place in solicitations to be issued under this proposed rule. This proposed section would allow contracting officers the flexibility to fashion their own acquisition-specific evaluation scheme with whatever information they deem to be in the best interest of the Government. However, this proposed section retains the requirement from FAR that price or cost to the Government must be included in any evaluation and that past performance must be evaluated in acquisitions exceeding the simplified acquisition threshold (SAT) (currently $100,000). As is currently set forth in the FAR, the contracting officer would be required, when not using past performance as an evaluation factor, to document the reasons why past performance is not being considered.

Proposed section 873.113 sets forth a new standard for exchanges with offerors in negotiated acquisitions. Currently, under FAR, any contact with a vendor about the vendor's proposal that goes to the substance of the offer constitutes ''discussions.'' This causes a set of rules to go into effect, including a requirement that the Government hold ''discussions'' with every offeror, even if there is no need for discussions with those other offerors. Less important contact is referred to as ''clarification'' under existing FAR rules. Moreover, there is another category in the FAR called ''communications'' which goes to establishment of a competitive range. Under proposed section 873.113, the Government could have contact, called ''exchanges,'' at any time with any vendor, as required. However, as with the current regulations, the Government could not improperly disclose information contained in another offeror's proposal (except as proposed at section 873.111(e), Alternative negotiation techniques).

Proposed section 873.114 sets forth a new concept of the ''best value pool.'' This is the ''pool'' of offeror(s) that, after initial evaluation, have the most highly rated proposals with the greatest likelihood of award. Although this is similar in concept to the ''competitive range'' of the current rules, the difference is that the contracting officer may, in the solicitation, limit the best value pool to a specific number of offerors among which an efficient competition can be conducted. Under the existing rules of the FAR, the contracting officer may limit the number of proposals in the competitive range for purposes of efficiency, but that number is not defined and could be a matter of significant dispute. This proposed rule would expand on this FAR authority by defining, in advance in the solicitation, what constitutes an efficient solicitation. This is necessary to reduce the likelihood of disputes and to clarify how the authority to limit the number of proposals in the best value pool will be applied in a solicitation.

Proposed section 873.115 sets forth new procedures governing proposal revisions. Currently, under the FAR, once a ''competitive range'' has been developed, all offerors therein must be given a chance to revise their proposals. At the close of ''discussions,'' all offerors remaining in the competition must be requested to submit a ''best and final offer.'' Under this proposed section, contracting officers would be able to request proposal revisions as often as needed during the acquisition process. There would be no need for a requirement to request a ''best and final

offer'' from each and every offeror in every acquisition. The proposed section would require that proposal submissions be safeguarded against improper disclosures.

Proposed section 873.116 would provide guidance to contracting officers on source selection. FAR 15.308 contains specific requirements for documenting the source selection decision that would continue to apply to acquisitions under the proposed rule.

Proposed section 873.117 would provide additional guidance to contracting officers on contract award, over and above that contained in FAR at 15.504, specifically on the differences between awarding RFQs and requests for proposals.

FAR 15.505 currently requires the contracting officer to make every effort to provide a preaward debriefing if a written request for a debriefing is received from the offeror no later than 3 days after receipt by the offeror of notice of exclusion from the competitive range. If a preaward debriefing is delayed, the contracting officer must provide written documentation for the contract file on the rationale for delaying the debriefing. Proposed section 873.118 would make preaward debriefings optional on the part of the contracting officer. Preaward debriefings may be provided when doing so is determined by the contracting officer to be in the best interest of the Government. Postaward debriefings would still be provided as required by the FAR. This is necessary to simplify and streamline the acquisition process.

Miscellaneous Changes

Currently, VAAR 801.602–70(a)(4) provides that proposed contracts for the mutual use or exchange of use of ''specialized medical resources'' above specified dollar thresholds be submitted to VA Central Office for review. This proposed rule would revise the term ''specialized medical resources'' to ''health-care resources'' pursuant to 38 U.S.C. 8152. The review threshold levels specified in VAAR have been changed by class deviation in accordance with section 801.404. This document proposes to incorporate that class deviation into VAAR and to raise the review thresholds for health-care resources. This is necessary to allow streamlined and expedited processing of proposed contracts and to reduce the administrative burden on contracting officers.

This proposed rule would make minor editorial changes to sections 801.602–71 and 801.601–72 to correspond with the new language used in this proposed rule.

VAAR 806.302–5(b) currently provides that contracts for the mutual use or exchange of use of specialized medical resources to be acquired from health-care facilities are approved for other than full and open competition, but requires justification and approval in accordance with FAR 6.303 and VAAR 806.303. Section 301 of Public Law 104–262 revised 38 U.S.C. 8153(a)(3)(A), restricting and modifying this authority. Under this new authority, only those acquisitions of health-care resources consisting of commercial services, the use of medical equipment or space, or research, to be acquired from institutions affiliated with the Department in accordance with 38 U.S.C. 7302, from medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, are approved for other than full and open competition. In addition, 38 U.S.C. 8153 provides that justification and approval is not required for contracts with these entities. This rule proposes to revise paragraph (b) of section 806.302–5 to incorporate this new authority into VAAR.

Section 301 of Public Law 104–262 revised 38 U.S.C. 8153(a)(3)(B)(i) to provide that contracts for the acquisition of commercial services or the use of medical equipment or space, not procured from affiliated institutions or approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), may be procured without regard to any law or regulation that would otherwise require the use of competitive procedures, provided the procurement is conducted in accordance with the simplified procedures proposed in this rule. Public Law 104–262 revised 38 U.S.C. 8153(a)(3)(B)(ii) to require that such acquisitions permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) and revised 38 U.S.C. 8153(a)(3)(D) to require that such acquisitions, if conducted on a sole source basis, must be justified and approved. This rule proposes to renumber current paragraph (c) of section 806.302–5 as paragraph (d) and to add new paragraph (c) to incorporate these new authorities into VAAR.

Currently, VAAR Part 812 addresses the acquisition of commercial services. This rule proposes to list the Part 852.273 clauses contained herein in section 812.302(g) for use in commercial service acquisitions, as authorized by FAR 12.301(f). This action is necessary, and is proposed based on the reasons set forth below, to permit use of these Part 852.873 clauses in VA's commercial service acquisitions.

This rule proposes to add the VAAR clauses at section 852.207–70, Report of Employment Under Commercial Activities, and section 852.237–7, Indemnification and Medical Liability Insurance, as shown below in full text, to section 812.302(c) for use in VA commercial service solicitations, including contracts issued under the authority of 38 U.S.C. 8151–8153. These VAAR clauses at sections 852.207–70 and 852.237–7 are currently set forth in 48 CFR Part 852. VA acquisitions under the authority of 38 U.S.C. 8151–8153 are considered to be for commercial services and the clauses at sections 852.207–70 and 852.237–7 may be required for use in such acquisitions, where applicable. The VAAR clause at section 852.207–70, as set forth below, is necessary to ensure that contractors provide VA employees, who might be displaced as a result of a competitive acquisition, with the employee's right of first refusal to jobs created by that acquisition. The VAAR clause at section 852.237–7, as set forth below, is necessary to ensure that VA contractors providing nonpersonal health-care services have adequate medical liability insurance. This insurance is required to protect both VA and veterans from medical malpractice.

Report of Employment Under Commercial Activities (Oct 1988)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An ''adversely affected Federal employee'' is:

(i) Any permanent Federal employee who is assigned to the Government commercial activity, or (ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) ''Employment openings'' are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award, including positions within a 50-mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The ''contract start date'' is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be

offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than 5 working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits, (ii) Sufficient job application forms for adversely affected Federal employees.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening, (ii) The date the offer was made, (iii) A brief description of the position, (iv) The date of acceptance of the offer and the effective date of employment, (v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and (vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 calendar days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period of up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualifications determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relating to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for noncompliance.* Failure of the contractor to comply with any provision of the clause may be grounds for termination for default.

(End of Clause)

Indemnification and Medical Liability Insurance (Oct 1996)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence:

[Contracting Officer insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests].

However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

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

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

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of Clause)

VAAR 807.304–77 currently requires the use of the above clause at section 852.207–70, Report on employment under commercial activities, in all contracts that include the FAR clause at section 52.207–3, Right of First Refusal. This proposed rule would add this currently existing clause to the list of clauses in VAAR Part 812 for use in commercial item acquisitions. This is necessary to clarify that this currently existing clause is authorized for use in applicable commercial item solicitations.

VAAR 837.403 currently requires the use of the above clause at section 852.237–7, Indemnification and Medical Liability Insurance, in lieu of FAR clause 52.237–7, in solicitations and contracts for nonpersonal health-care services. This proposed rule would clarify at section 837.403 that this same VAAR clause must also be used in solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151–8153 and VAAR Part 873. This proposed rule would also add this currently existing clause to the list of clauses in VAAR Part 812 for use in commercial item acquisitions. This is necessary to clarify that this currently existing clause is authorized for use in applicable commercial item solicitations. The clause is necessary for use in VA solicitations and contracts to ensure that VA contractors providing nonpersonal health-care services have adequate medical liability insurance. This insurance is required to protect both VA and veterans from medical malpractice.

VAAR Part 852 does not currently contain any provisions specifically relating to the acquisition of commercial services under the simplified acquisition authority of 38 U.S.C. 8151–8153. This rule proposed to add four

provisions to the VAAR, as set forth herein in Part 852. The following is an explanation of these proposed provisions.

The proposed provision at section 852.273–70, Late offers, would replace paragraph (f) of FAR provision 52.212–1 in acquisitions of commercial services or the use of medical equipment or space conducted in accordance with VAAR Part 873. Paragraph (f) of FAR provision 52.212–1 currently provides that offers or modifications of offers received after the exact time specified in the solicitation for receipt of offers will not be considered. VAAR provision 852.273–70 proposes to allow consideration of quotations, proposals, or modifications of proposals received after the time set forth in the request for quotations or request for proposals at the discretion of the contracting officer, if determined to be in the best interest of the Government. This will ensure that VA will be able to accept the best offer submitted on a solicitation, even if that offer is received after the time set forth in the solicitation.

The provision at section 852.273–71, Alternative negotiation techniques, proposes to allow the use of the alternative negotiation techniques set forth at section 873.111(e). The techniques listed therein include (1) allowing the contracting officer to indicate to an offeror how the offeror must improve its offer in order to be considered for award and (2) allowing the contracting officer to post prices and permit revisions of offers based on that information. We believe these alternative negotiation techniques will allow VA to conduct acquisitions on a basis more in line with commercial practices and will result in the acquisition of improved services at reduced prices. Neither FAR nor VAAR currently contains provisions expressly allowing alternative negotiation techniques.

The proposed provision at section 852.273–72, Alternative evaluation, would implement the provision at section 852.273–71, Alternative negotiation techniques, by advising offerors how prices would be posted and by providing guidance to offerors on how to submit offers. In addition, this proposed provision would advise offerors on how options would be evaluated, i.e., by adding the total price of all options to the total price for the basic requirement. It would also advise offerors that the Government would not be obligated to exercise the options. The ''options'' paragraph is included in this proposed provision because this provision might be used alone, without a separate ''options'' provision.

The proposed provision at section 852.273–73, Evaluation—health-care resources, would replace FAR provision 52.212–2 in acquisitions for commercial services conducted in accordance with VAAR Part 873. FAR provision 52.212–2 provides guidance to offerors on what factors the Government will use to evaluate offers and on how those factors are weighted. Under proposed VAAR 873, VA would not be required to use factors, as described in the FAR, to evaluate offers. Rather, VA would include ''evaluation information'' in the solicitation stating how offers will be evaluated. In addition, VA would not be required to state how the evaluation information is weighted, but would be required to state the relative importance of the evaluation information. This proposed provision is written to replace FAR 52.212–2 with these authorities in mind. Also, paragraph (c) has been drafted to clarify that notice of acceptance of an offer will create a binding contract if the solicitation is a request for proposals. If the solicitation is a request for quotations, that would not be the case, as notice of acceptance would not create a binding contract.

The provision at section 852.273–74, Award without exchanges, is proposed to be added to VAAR to advise offerors that VA intends to evaluate proposals and award a contract without exchanges with offerors. This provision is necessary in order to avoid any misunderstanding regarding award and to help ensure that offerors provide their best prices and terms with their initial offer.

Consideration of Public Comments

The withdrawn proposed rule included a certification under the Regulatory Flexibility Act that it would not have a significant economic impact on a substantial number of small entities. This certification was based on the finding that costs to comply with the provisions of the proposed rule would be minimal. The Office of Advocacy (Advocacy) of the Small Business Administration (SBA) commented that, instead of the certification, we should have prepared an initial regulatory flexibility analysis. Advocacy opposed the degree of discretion that this rule would afford to contracting officers in seeking competition and evaluating and selecting awardees. Advocacy asserted that the proposed rule would alter the process of ''full and open competition'' and also asserted that it would sacrifice competition at the expense of creating false efficiencies and short-term savings. Advocacy further asserted that ''[o]nly market-based competition can prevent monopoly practices and the concentration of federal dollars in the hands of a few large industry giants.'' More specifically, Advocacy asserted that the proposed rule limits competition, provides the contracting officer with virtually unilateral authority to accept proposals, even when they are submitted after the closing date of the solicitation, and provides many other non-competitive changes.

The Executive Branch has worked closely with Congress to improve the Government's acquisition practices and productivity. These reforms allow agencies to structure their contracting operations in a way that makes sense and provides increased flexibility for contracting officials to make and implement good business decisions. For all purchases under $100,000 and, on a test basis until January 1, 2002, for purchases of commercial items up to $5 million, contracting officers are authorized to use simplified procedures. These authorities give contracting officials flexibility to emulate commercial practices and use the procedures they think will work best in the context of the specific products and services, market conditions, and other circumstances involved for using competition to obtain value. For large purchases, the revisions to FAR Part 15 help contracting officers, within current statutory constraints, to better focus the Government's resources on obtaining the best value.

The provisions of this proposed rule are designed to build on these acquisition reforms in a manner that, as envisioned by Pub. L. 104–262, strengthen the efficiency and effectiveness by which VA acquires health care resources on behalf of America's veterans. The rule would require contracting officers to seek competition to the maximum extent practicable. In accomplishing this end, the rule would not sacrifice competition; nor would it give contracting officers unfettered discretion in evaluating sources and making awards.

With respect to soliciting sources, for acquisitions over $100,000, the proposed rule would require acquisitions to be publicly announced. Contracting officers would be afforded greater flexibility in shaping how notice is published. This flexibility is not expected to be used to limit competition. Rather, it is intended to enable contracting officers to select the means of notice that will maximize effective dissemination of information to interested sources. While contracting officers would have the option of not publicizing contracting opportunities

below $100,000, they would still be expected to solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure the purchase is advantageous to the Government.

With respect to the evaluation of sources and awarding of contracts, the proposed rule would simplify the procedures associated with the conduct of negotiations, especially with respect to that which would otherwise be required under FAR Part 15. However, key source selection decision principles would remain unchanged. Among other things, contracting officers would be required to: (1) Make source selection decisions in a manner consistent with the solicitation (which would provide evaluation information to interested offerors); (2) treat prospective contractors fairly and impartially; (3) determine that prices are fair and reasonable; and (4) document their decisions.

Of the approximately 6,000 commercial service acquisitions valued in excess of $25,000 awarded annually in Fiscal Years (FY) 1998 and 1999 that might have been covered by this proposed rule, only a total of three (two in FY 1998 and one in FY 1999) of those acquisitions were in excess of $5 million. Less than 2,000 fell between $100,000 and $5 million. Thus, where the differences between the proposed rule and the FAR are greatest (i.e., for acquisitions over $5 million), the number of potentially affected entities is minimal. While there are more entities seeking to make offers in the lower dollar range, the differences between the FAR and the proposed rule are considerably less extensive in that range.

In toto, the proposed rule should ensure that competition is used effectively, as authorized and envisioned by Public Law 104–262, and in a manner that promotes strong participation by contractors small and large. As discussed in greater detail below, VA does not believe that the ways in which the proposed rule differs from the FAR would negatively impact competition. In addition, VA believes that the proposed rule would not negatively impact small business participation and intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this rule and the impact on VA's socioeconomic programs.

For acquisitions exceeding $100,000, the proposed rule differs from the FAR in the following major areas:

FAR requirement	Proposed rule requirement
a. 8.001: Four levels of priority for acquiring services	873.103: Only one priority source.
b. 6.101: Prior to 1/1/2002, for negotiated commercial acquisitions exceeding $5 million, promote full and open competition (i.e., use FAR Part 15).	873.104(c): Promote competition to the maximum extent practicable (i.e., use simplified procedures similar to FAR Part 13).
c. 6.101: After 1/1/2002, for negotiated commercial acquisitions exceeding $100,000, promote full and open competition (i.e., use FAR Part 15).	873.104(c): Promote competition to the maximum extent practicable (i.e., use simplified procedures similar to FAR Part 13).
d. 19.502–2(b): Set aside for small business if two or more. No waiver provisions.	873.107(a): Set aside for small business if two or more. May be waived by the head of the contracting activity.
e. 5.201: Transmit notice of acquisitions exceeding $25,000 to the Governmentwide point of entry (GPE).	873.108(a): Publicly announce acquisitions exceeding $100,000 using a medium designed to obtain competition to the maximum extent practicable.
f. 6.302–1 & 5.101: Synopsize proposed acquisitions where only one source can satisfy agency needs in the GPE.	873.108(b): Acquisitions from an affiliate or acquisitions of hospital care, medical services, and other health-care services from a sole source are exempt from synopsis in the GPE.
g. 15.208 and 52.212–1(f): Late offers will not be considered. Late quotes not addressed.	873.109(d): Late offers and late quotes may be considered if in the best interest of the Government.
h. 13.5: Prior to 1/1/2002, use of the simplified procedures of FAR Part 13 is limited to acquisitions of $5 million or less.	873.111(a)(2): Use of simplified procedures similar to FAR Part 13 may be used regardless of the dollar value of the acquisition. No expiration date for this authority.
i. 13.5: After 1/1/2002, use of the simplified procedures of FAR Part 13 is limited to acquisitions of $100,000 or less.	873.111(a)(2): Use of simplified procedures similar to FAR Part 13 may be used regardless of the dollar value of the acquisition.
j. 15.202: Allows issuance of an advisory multi-step solicitation. All initial offerors may still submit full offers, even if advised that their offers are unlikely to be viable.	873.111(d): Allows multiphase solicitations and rejection of offerors whose initial offers indicate that they are unlikely to be viable contenders for award.
k. 15.306(d): May bargain with offerors. Extensive limits on what can be discussed when.	873.111(e)(1): Expands on what can be discussed and on when discussions can be held. Allows the contracting officer to indicate a price or feature that offeror must meet or improve upon to remain competitive.
l. No comparable FAR provision	873.111(e)(2): Allows public posting of offer prices and subsequent submission of revised offers.
m. 15.304: Provides detailed requirements for evaluation factors	873.112(a): Provides agency acq. officials with broad discretion in establishing criteria, factors, and other evaluation information (except that price or cost must be evaluated in all acquisitions and past performance evaluated in acquisitions over the SAT).
n. 15.304(d): All factors and subfactors affecting award and their relative importance shall be stated.	873.112(d): The relative importance of any evaluation information must be stated.
o. 15.201/15.306: Detailed guidance on exchanges of information with industry, categorized as pre-receipt of proposals, post-receipt but prior to establishing a competitive range, and post-establishment of a competitive range. Must conduct discussions with all offerors in the competitive range.	873.113: Broad authority for the contracting officer to conduct exchanges with industry throughout the acquisition process. Need not conduct exchanges with all offerors.
p. 15.306(c): Contracting officer must establish a competitive range if discussions are to be held.	873.114: Contracting officer may establish a best value pool.
q. 15.306(c)(2): Contracting officer may limit number of proposals to greatest number that will permit efficient competition.	873.114(b): Contracting officer may state in the solicitation a maximum number of offerors that will be considered in the best value pool.

FAR requirement	Proposed rule requirement
r. 15.307: Each offeror in the competitive range shall be asked to submit a final proposal revision. Contracting officer shall establish a common cutoff date for all final proposal revisions.	873.115: Contracting officer may request revisions as often as needed. Contracting officer is not required to establish a common cutoff date for all offerors.
s. 15.505: Offerors excluded from the competitive range may request a debriefing before award. Contracting officer may delay the debriefing if in the best interest of the Government. Contracting officer must document the reasons for the delay.	873.118: Offerors excluded from the competition under an RFP may request a debriefing. Contracting officer may provide a pre-award debriefing if determined to be in the best interest of the Government. No documentation is required if a pre-award debriefing is not provided.

The following is a discussion of the above differences and their impact on competition:

a. As noted in the **SUPPLEMENTARY INFORMATION** above, FAR 8.001(a)(2) sets forth four levels of priority for the acquisition of services. These are, in descending order of priority: (i) Services available from the Committee for Purchase from People who are Blind or Severely Disabled; (ii) mandatory Federal Supply Schedules (FSS); (iii) optional use FSS; and (iv) Federal Prison Industries, Inc., or commercial sources (including educational and nonprofit institutions). Proposed section 873.103 would exempt VA from the provisions of FAR 8.001(a)(2) regarding the lowest three levels of priority. For VA, there are no longer any mandatory use FSS (the highest level of priority of the three levels proposed for elimination), so elimination of this priority level has no impact. As to the second level, optional use FSS, even without the priority levels, VA contracting officers would still be able to place delivery orders against optional use FSS contracts in accordance with FAR 8.404. However, they would not be required to do so by the list of priority sources. Under the proposed rule, it would be at the contracting officer's option whether or not to issue a delivery order against an optional use FSS contract or to pursue another contracting tool. If a contracting officer issued a solicitation for services instead of placing a delivery order with an optional use FSS contractor, optional use FSS contractors, Federal Prison Industries, Inc., and commercial sources would have an opportunity to compete. This provision of the proposed rule may provide firms, including small businesses, which chose not to participate in the FSS program with additional opportunities to compete. The decision on whether or not to use the FSS program would not affect whether award was made to a small business under the optional use FSS program or to a small business under a solicitation. We believe that this provision would result in minimal, if any, impact on small business and little change in the number of awards to small business. However, it does have the potential to increase, rather than decrease, competition.

b. Until January 1, 2002, the FAR allows use of the simplified provisions of FAR Part 13 for the acquisition of commercial services not to exceed $5 million in value. For negotiated acquisitions exceeding $5 million, the FAR requires use of the more formal negotiation procedures of FAR Part 15. The proposed rule differs from the FAR by allowing use of simplified procedures similar to those in FAR Part 13 for all acquisitions. However, competition would still be required under the proposed rule and all offers received would have to be considered (see 873.104(c)). The negotiation method used for the acquisition, whether the procedures of the FAR or the more simplified procedures of this proposed rule, would not, in our opinion, have an impact on competition or on whether or not award would be made to a small business.

c. The test provisions of FAR 13.5 are scheduled to expire on January 1, 2002. If those test provisions are not renewed or extended, after that date, all negotiated commercial acquisitions conducted under the FAR exceeding $100,000 will have to be conducted using the formal procedures of FAR Part 15. However, this proposed rule would allow VA to continue to use simplified procedures to conduct such acquisitions. Again, as noted in ''b.'' immediately above, competition would still be required under the proposed rule. As discussed in paragraph ''e.'' below, the proposed rule would require public announcement of proposed contract actions using methods that maximize effective dissemination and would require that all offers received be considered. The proposed rule would allow contracting officers to use simplified negotiation procedures rather than the more formal procedures of FAR Part 15. The method of negotiation used should not negatively impact competition or affect whether or not award would be made to a small business.

d. The provisions of section 873.107 regarding the waiver of small business set-asides are addressed in the Initial Regulatory Flexibility Analysis.

e. Although the proposed rule differs from the FAR in not requiring publication of contracting opportunities in the Governmentwide point of entry (GPE), the proposed rule (at 873.108) would require contracting officers to publicly announce proposed procurements over $100,000 using those means necessary to ensure maximum effective dissemination of information on the proposed acquisition. Thus, for example, if the contracting officer determined that the GPE was the most effective tool for advising interested offerors of an opportunity over $100,000, contracting officers would be expected to use the GPE. For acquisitions under $100,000, contracting officers would be expected to solicit a sufficient number of sources to promote competition to the maximum extent practicable. These changes should not reduce competition but rather improve the efficiency by which VA solicits interested sources. Additional discussion of 873.108 can be found in the Initial Regulatory Flexibility Analysis.

f. The provisions of section 873.108 regarding announcing acquisitions in the GPE are addressed in the Initial Regulatory Flexibility Analysis.

g. The issue regarding acceptance of late offers is addressed below.

h. and i. The use of simplified procedures similar to those of FAR Part 13 for commercial service acquisitions, versus use of the more formal procedures of FAR Part 15, is addressed in paragraph b. above.

j. The FAR allows the contracting officer to issue an advisory multi-step solicitation. Initial offers are submitted containing limited information. All initial offerors can proceed to submit full offers, even if one or more of those offerors are advised that, based on their initial offers, their offers are unlikely to be viable. This proposed rule contains similar provisions, with the exception that, under this proposed rule, offerors whose initial offers indicate that they are unlikely to be viable competitors could be excluded from further participation in the acquisition. This

proposed rule would be beneficial to offerors by relieving them of any burden to prepare final offers when those offers are unlikely to receive award and would be beneficial to the Government by eliminating a requirement to evaluate full proposals from firms that are unlikely to receive award. The proposed rule would save time and effort on both the offeror's and the Government's part. Although the procedure would authorize mandatory ''downselects,'' the impact on competition should be minimal. While downselects under the multi-step process authorized by FAR Part 15 are advisory only, we believe that, in most instances, sources advised that they are unlikely to receive award will not compete. The proposed rule offers the efficiency of being able to exclude the less than highly competitive offeror that occasionally may wish to pursue its offer under the Part 15 process (but would not add significantly to the overall competitive pressures of the source selection, given its comparatively weaker competitive position).

k. The FAR allows contracting officers to bargain with offerors, but places limits on what can be discussed when. This proposed rule would expand on when discussions (called ''exchanges'' in the proposed rule) could take place and would expand on what could be discussed. The intent of the proposed rule is to ensure that there is a complete understanding between the Government and the offerors prior to making an award decision. In addition, the proposed rule would allow the contracting officer to indicate a price, contract term or condition, feature or requirement the offeror would have to meet or improve upon in order to stay competitive. These provisions would help ensure VA acquires the best value services available but should have no impact on the number of offers received and thus no impact on the amount of competition.

l. The proposed rule would allow the contracting officer to publicly post all prices received on an offer and permit offerors to subsequently revise their offers. There are no similar provisions in the FAR. Since this provision would apply equally to all offerors and since it would apply only after offers had been submitted, we do not expect it to have a negative impact on the number of offers received or to thereby limit competition.

m. The FAR specifies requirements for evaluation factors. This proposed rule would provide broad discretion to agency acquisition officials to establish evaluation information. How the factors/information would be structured and what factors/information the Government would use to evaluate offers should have little, if any, impact on competition. If a firm is capable of, and interested in, providing the service, the firm would submit an offer based on the factors/information provided. We do not expect any reduction in the number of offers received based on this provision.

n. The FAR requires that all evaluation factors and subfactors and their relative importance be stated in the solicitation. This proposed rule would require that the evaluation information be stated in the solicitation and that the relative importance of those evaluation information items be stated. Under the proposed rule, the contracting officer would have broad discretion to determine what to include as evaluation information, but this provision should have no effect on the amount of competition expected under such solicitations. There is no reason to suspect that fewer firms would submit offers because of this provision.

o. The FAR contains guidance on, and requirements for, conducting discussions with vendors. If discussions are held, the FAR requires that the contracting officer hold discussions with all offerors, even if there is nothing to discuss. The proposed rule at section 873.113 would simplify the negotiation process by providing the contracting officer with broad discretion on what to discuss and on when and how those discussions are to be conducted. In addition, the proposed rule provides that the contracting officer need hold discussions only if there is something to discuss. The intent of the proposed rule is to simplify the negotiation process while ensuring that there is a firm understanding between the Government and the offerors prior to making an award decision. We believe that these provisions would have no effect on the number of firms that submit offers on any particular solicitation and that these provisions are neutral as to whether or not award is made to a small business.

p. The FAR requires the contracting officer to establish a competitive range if discussions are to be held, while the proposed rule at section 873.114 would provide that the establishment of a best value pool (similar to a competitive range) would be optional. This provision would have no effect on the number of firms submitting offers on any particular solicitation. If a best value pool is not established, then all offers received would be considered to be in contention for award.

q. The FAR currently allows the contracting officer to limit the number of firms in the competitive range to the greatest number that will permit an efficient competition. The proposed rule at section 873.114 would provide a similar method for limiting the number of firms in the competitive range, allowing the contracting officer to set, in advance in the solicitation, a maximum for the number of firms that would be considered in the best value pool. No dollar threshold is proposed for use of this authority. All firms submitting offers would be evaluated, but only the top 3 (or whatever number set by the contracting officer) would be included in the best value pool. Further negotiations would then be conducted with those top 3 firms. Again, we believe this provision would not have an impact on whether or not a firm decides to submit an offer or on whether or not a small firm versus a large firm was selected for inclusion in the best value pool.

r. The FAR requires that each offeror in the competitive range be requested to submit a final proposal revision and that a common cut-of date be established for receipt of those final proposal revisions. This proposed rule at section 873.115 would allow the contracting officer to hold discussions (exchanges) with offerors as often as needed, but if there was no need to hold discussions with a firm that had submitted an outstanding offer, there would be no requirement to do so. Offerors could submit revised offers at any time. Each firm with whom exchanges were to be held would be provided a time period during which it may submit a revised offer. Award would be made after the last time period had expired. Again, these procedures would all be applicable only after initial offers had been received. We believe the presence or lack of these procedures would have no impact on whether a firm decides to submit an offer or on whether a small business, versus a large business, received award.

s. The FAR requires the contracting officer to make every effort to provide a pre-award debriefing to offerors excluded from the competition, if so requested. The debriefing may be delayed if the delay is in the best interest of the Government. The reasons for the delay must be documented in writing. This proposed rule at section 873.118 would allow the contracting officer more discretion in deciding whether or not to provide a pre-award debriefing and would remove the requirement for written justification if the debriefing is delayed. Post award debriefings would still be required, as provided in the FAR. This provision would simplify and expedite the award process. We believe the presence or lack of this provision would have little to no

effect on whether a firm decided to submit a bid on any particular solicitation or on whether a small business received award. Accordingly, we believe this provision should have little effect on competition.

Based on the above, it is our belief that the proposed rule would not limit competition.

Advocacy contended that the original proposed rule's provisions allowing the consideration of offers received after the closing date of a solicitation would negatively impact competition. No changes to this new proposed rule have been made based on this comment. Current General Accounting Office (GAO) protest decisions permit an agency under certain circumstances to accept a late proposal by extending the due date for receipt of proposals. *Ivey Mechanical Co.,* Comp. Gen. Dec. B–272764, 96–2 CPD ¶ 83. With regard to quotes, current GAO protest decisions state that if a request for quotation (RFQ) does not contain a late quotations clause, but merely requests quotations by a certain date, that date is not considered a firm date for the receipt of quotations. In such a case, the agency is not precluded from considering a quotation received after that date, provided that no substantial activity has transpired in evaluating quotes and the other quoters would not be prejudiced. *Instruments & Controls Serv. Co.,* 65 Comp. Gen. 685 (1986). Since offers and quotes are not publicly disclosed, vendors are not prejudiced by consideration of offers or quotes received late. Accordingly, this proposed rule concerning acceptance of late quotations or proposals essentially restates existing Government contract law and procedure. In our view, this provision would be neutral regarding impacts on small business versus large business. There is no reason to believe that late quotations or proposals would more likely be submitted by large businesses than by small businesses.

Several comments were received from the Small Business Administration (SBA).

SBA questioned whether the term ''sole source,'' as used in section 873.104, accurately reflects a common understanding of the term ''sole source'' as there being only one available source. No changes are made to this revised proposed rule based on this comment. In our view, the term ''sole source,'' as used in this revised proposed rule, is consistent with the definition of a ''sole source acquisition'' as provided in FAR 6.003, meaning that negotiations are conducted with only one source. Under the FAR definition, an acquisition would be a ''sole source acquisition'' if negotiations were conducted with only one source, as would be the case for a VA acquisition from an affiliated institution, even if there were other sources that could also provide the service.

Sections 873.104(c) and 873.108(a) include the term ''as appropriate.'' SBA opposed the inclusion of this term in the rule based on an assertion that it does not appear in 38 U.S.C. 8153(a)(3)(B)(ii). No changes are made to this revised proposed rule based on this comment. The cited statutory provisions were amended by section 402(e) of Public Law 105–114 to include this term.

SBA recommended that VA develop guidelines to define market research in section 873.107. We agree with the comment and made a change to section 807.107. The FAR already includes guidelines to define market research at section 10.002(b). The applicable provisions of section 10.002(b) would be useful in conducting market research for commercial services. Therefore, we have incorporated the provisions of FAR 10.002(b) into the guidance on market research contained in this revised proposed rule.

SBA suggested that we revise section 873.107 to require the head of the contracting activity to submit copies of approved waivers of small business set asides to the Director, VA Office of Small and Disadvantaged Business Utilization, and to the Assistant Administrator, SBA Office of Prime Contracting. No change was made to this revised proposed rule based on this comment. We believe that if an inter-governmental agreement of this nature were to be established, it would not need to be included in regulations.

SBA raised concerns with the provision at section 873.108(c) making public announcement optional for procurement opportunities below the SAT. No changes were made to this revised proposed rule based on this comment. Even though public announcements are not required by the rule, contracting officers are expected to solicit a sufficient number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors. Public Law 104–262 grants VA authority to ''permit all responsible sources, *as appropriate,* to submit a bid, proposal, or quotation * * *.'' (emphasis added) and to ''prescribe simplified procedures for the procurement of health-care resources.'' As provided in the proposed rule, VA contracting officers are required to obtain competition to the maximum extent practicable. The ''as appropriate'' provision of Public Law 104–262 permits VA to determine what is appropriate regarding announcing the solicitations valued below the SAT. Further, Public Law 104–262 states that acquisitions conducted in accordance with these simplified procedures ''may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures * * *.'' Accordingly, the provisions of section 873.108(c) are consistent with statute.

SBA suggested that VA select one method to publicize its procurement opportunities. No change was made to this revised proposed rule based on this comment. Changing technology makes selection of one alternative too limiting. The intent of this proposed rule is to maximize the options available for public announcements and to maximize the effective distribution of information on VA solicitations. Contracting officers should be free to select the methods for announcing acquisitions that are most appropriate for the type of acquisition being conducted.

SBA objected to the provisions at section 873.111(a)(2) of the original proposed rule which provide that, for acquisitions below the simplified acquisition threshold ($100,000), two quotations will be considered as meeting the requirement for competition to the maximum extent practicable. Based on subsequent discussions held with a representative from the SBA Office of Advocacy, changes have been made to this section. The provision providing for two quotations has been removed. The requirements of FAR 13.104 would thus apply regarding obtaining competition to the maximum extent practicable.

SBA pointed out that section 873.118, Debriefings, only addressed debriefings for multiphase or best value pool acquisitions, and did not address debriefings for requests for quotations (RFQs), sealed bids, or negotiated acquisitions that are not multiphase or best value pools. In this regard, SBA suggested that debriefings be required either after an offeror is eliminated from the competition or after contract award. Based on this comment, changes are made to this proposed rule. The FAR does not require debriefings for RFQs or sealed bids. In addition, while the FAR at section 15.505(b) requires that the contracting officer ''make every effort to debrief an unsuccessful offeror as soon as practicable,'' it allows the contracting officer to refuse the request for a pre-award debriefing if providing the debriefing is not in the Government's

best interest. The reasons for the denial must be documented in the contract file. The intent of this proposed rule is to simply and expedite the award process. Towards this end, the proposed rule would remove some of the administrative burden imposed by the FAR, eliminate the documentation requirements of the FAR, and make pre-award debriefings clearly optional. Making pre-award debriefings optional would help expedite the award process. Post-award debriefings would still be required for any firm requesting a debriefing as currently provided in the FAR. Where this proposed rule is silent, existing FAR requirements would apply. Thus, for RFQs, the ''request for information'' requirements of FAR 13.106–3(d) would still apply. For sealed bids, the ''information to bidders'' requirements of FAR 14.409 would still apply. Based on the comment, the references to multiphase acquisitions and best value pools have been replaced with a reference to a ''request for proposals (RFP)'' to clarify that this section would apply to all RFPs conducted under this authority.

A VA contracting officer objected to the proposed regulatory requirement of section 873.105 that the contracting officer form a team for each acquisition of commercial services or the use of medical equipment or space conducted under the authority of 38 U.S.C. 8153. We have made changes to this revised proposed rule based on this comment. Prior to the enactment of Public Law 104–262, 38 U.S.C. 8153 only authorized VA to acquire specialized medical services. Public Law 104–262 expanded the types of services that can be acquired under the authority of 38 U.S.C. 8153 to include any health-care resource that is a commercial service or the use of medical equipment or space. These proposed simplified procedures have been drafted to cover this expanded authority. However, we expect these simplified acquisition procedures to continue to be used primarily for the acquisition of medical services. Such acquisitions are usually highly complex and of significant dollar value. It is critical to the success of such acquisitions that appropriate staff at the medical center fully cooperate with the contracting officer in the development of specifications, the conduct of the acquisition, as appropriate, and in the administration of the contract. We believe this can best be accomplished by the formation of a team. The composition of the team is to be determined by the contracting officer and the team would not need to be the same for every acquisition. The team could consist of as few as two people, the requestor and the contracting officer. While we feel a team is necessary for complex, high dollar value acquisitions, we agree with the commenter that a team may not be necessary for simple acquisitions of low dollar value. Therefore, based on the comment, we have proposed to set a dollar threshold of $100,000 (the SAT) for the requirement to form a team.

One commenter expressed concern that, if adopted, the rule would effectively limit competition and prevent textile rental companies from obtaining VA laundry service contracts. No changes are made to this revised proposed rule based on this comment. We do not believe this revised proposed rule would have an effect on whether textile rental companies obtain VA laundry service contracts. We believe the pertinent issue raised by the commenter concerns VA decisions on whether or not to compete laundry services. Those determinations are beyond the scope of and not addressed in the proposed rule.

One commenter objected to the provisions of the proposed rule exempting VA from provisions of FAR and VAAR. No changes are made to this revised proposed rule based on this comment. Public Law 104–262 specifically grants VA authority to make such exemptions.

One commenter alleged that the rule attempts to waive the Economy Act and allow VA to buy commercial services from other Government agencies with few restrictions. No changes are made to this revised proposed rule based on this comment. Acquisitions under the Economy Act and FAR Subpart 17.5 are not addressed in this proposed rule. In addition, this proposed rule does not cover acquisitions of health-care resources from the Department of Defense (DoD). Under 38 U.S.C. 8111, VA has specific authority to acquire health-care resources from DoD. This proposed rule, however, does cover acquisitions from other Federal agencies. The statute upon which this proposed rule is based, 38 U.S.C. 8153, provides that VA may make arrangements by contract or other form of agreement for the mutual use or exchange of use of health-care resources with ''any health-care provider, or other entity or individual.'' These terms include other Federal agencies. Thus, the statute specifically authorizes VA to acquire commercial services or the use of medical equipment or space from other Federal agencies. However, at this time, we have no reason to believe that other Federal agencies will submit bids, proposals, or quotations in response to VA solicitations for commercial services or the use of medical equipment or space.

One commenter expressed concern regarding the vague language used in the proposed rule and the potential negative affects thereof on competition and suggested that the final rule define and give examples for the terms ''best interest of the Government'' and ''contracting officer's discretion.'' No changes are made to this revised proposed rule based on this comment. Circumstances vary widely and it would be difficult, if not impossible, to describe all circumstances where a decision is in the ''best interest of the Government'' or to define whether decisions subject to the ''contracting officer's discretion'' are either acceptable or not acceptable.

One commenter requested that VA provide examples of how it intends to define the term ''reasonable,'' as used in the November 9, 1998, **SUPPLEMENTARY INFORMATION** portion of the **Federal Register** proposed rule notice. No changes are made to this revised proposed rule based on this comment. This term, as used in the **SUPPLEMENTARY INFORMATION,** was not a part of the regulation. Whether or not an action is ''reasonable'' depends on the circumstances. Defining what is reasonable in one set of circumstances might restrict action in another set of circumstances, even when the proposed action under that new set of circumstances could also be considered ''reasonable.'' This notwithstanding, contracting officers must conduct business with integrity, fairness, and openness. Under the proposed rule, contracting officers would remain subject to FAR 1.102–2(c)(3), which states that all contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

Two commenters addressed the provisions of the proposed rule at sections 801.602–70 and 801.602–71 regarding technical and legal review requirements for VA sales agreements. Changes are made to this revised proposed rule based on these comments. This proposed rule is not intended to apply to the sale of VA services. Therefore, provisions regarding technical and legal review of proposed VA sales agreements have been removed.

One commenter requested clarification of section 806.302–5 regarding the legal definition of the term ''affiliated institution.'' No changes are made to this revised proposed rule based on this comment. Pursuant to 38 U.S.C. 7302, VA may have affiliations

with schools of medicine, osteopathy, dentistry, nursing, pharmacy, optometry, podiatry, public health, or allied health professions, other institutions of higher learning, medical centers, academic health centers, hospitals, and such other public or nonprofit agencies, institutions, or organizations as the Secretary of Veterans Affairs considers appropriate.

One commenter expressed concern with the provisions of the proposed rule exempting VA from the automatic small business set-aside provisions of the FAR for acquisitions between $2,500 and $100,000, from the FAR notification requirements for announcing commercial solicitations in the Commerce Business Daily (CBD), and from other FAR acquisition processes and techniques. The commenter expressed concern that the proposed rule gives contracting officers too much discretion. Changes were made to the exemption from the automatic set-aside provisions of FAR 13.003(b)(1) and 19.502–2(a) contained in the November 9, 1998, proposed rule based on these comments.

We examined the exemption to the automatic set-aside of acquisitions between $2,500 and $100,000 for small business and determined that elimination of this exemption would not impact the ability of VA to conduct simplified acquisitions. Accordingly, we have removed that exemption from this revised proposed rule.

Regarding a comment on the broad discretion given to contracting officers, that discretion is consistent with the reforms of the Federal Acquisition Streamlining Act and the Clinger-Cohen Act and other acquisition reform efforts. It provides contracting officers with authority to conduct acquisitions in a manner that is in the best interest of the Government. No changes were made to this revised proposed rule based on this comment.

One commenter expressed concern regarding the statement contained in the proposed rule that VA is exempt from laws that require the use of competitive procedures. No changes were made to this revised proposed rule based on this comment. VA has statutory authority for this exemption. 38 U.S.C. 8153 specifically states that ''[I]f the health-care resource required is a commercial service, the use of medical equipment or space, and is not to be acquired from an entity described in subparagraph (A), any procurement of the resource may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring the resource, but only if the procurement is conducted in accordance with the simplified procedures prescribed pursuant to clause (ii).'' 38 U.S.C. 8153 goes on to require, for acquisitions not conducted with affiliates, that the simplified procedures permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation and that acquisitions conducted on a sole source basis be justified in writing. This proposed rule sets forth those simplified procedures. The commenter went on to state a belief that Congress intended that VA be covered under the newly enacted Federal Activities Inventory Reform (FAIR) Act and stated an expectation that VA will comply with all of the FAIR Act provisions. No changes are made to this revised proposed rule based on this comment. Issues concerning the FAIR Act are outside of the scope of and not addressed by this proposed rule.

One comment from a VA contracting officer requested clarification of the distinction between the terms ''weighted,'' as used in the **SUPPLEMENTARY INFORMATION** portion of the proposed rule notice of November 9, 1998, and ''relative importance,'' as used in section 873.112(d). The proposed rule at section 873.112(d) states that the relative importance of any evaluation information included in a solicitation shall be set forth therein. The **SUPPLEMENTARY INFORMATION** portion of the proposed rule of November 9, 1998, merely reflected that, consistent with FAR 15.304(d), the elements that are distinguished by ''relative importance'' are not required to be weighted.

In addition to the changes noted above, several other changes were made to the proposed rule document published in the **Federal Register** on November 9, 1998, as follows:

- A statement exempting architect-engineer (A/E) services from the rule has been added to section 873.102. A/E services are currently acquired in accordance with 40 U.S.C. 541–544. It is not the intent of this proposed rule to change the way VHA acquires A/E services or to deviate from the requirements of 40 U.S.C. 541–544.
- Additional provisions have been added to sections 873.105 and 873.112 regarding acquisition planning and the evaluation of past performance. These are important aspects of the acquisition process and warrant additional emphasis in the rule.
- A provision has been added to section 873.107 to clarify that the section only applies to acquisitions in excess of the micro-purchase threshold. The FAR does not require set-aside of acquisitions below the micro-purchase threshold and this section was not intended to be more restrictive than the FAR.
- Based on comments received from SBA, the number of days provided in 873.107(b) for SBA to notify the contracting officer of their intent to appeal has been changed from 1 day to 2 days to correspond with the number of days provided in the FAR.
- A provision has been added to section 873.108(b) to clarify that the exemption to announcing sole source acquisitions in the GPE would also apply to sole source mutual use or exchange of use contracts. To the extent that VA would be acquiring services under such contracts, those contracts are ''acquisitions,'' as originally covered by this paragraph.
- A provision has been added to section 873.117 to clarify that it is at the contracting officer's option, rather than a requirement, to establish a binding contract when a request for quotation process was used to obtain quotes. As originally proposed in the November 9, 1998, document, this section could have been interpreted as requiring such action rather than making it optional.
- A Paperwork Reduction Act notice has been added to the proposed rule on a currently existing VAAR clause at section 852.207–70, Report of employment under commercial activities, and the clause has been added to VAAR Part 812 for use in commercial item acquisitions.
- Based on updated Federal Procurement Data System data, the estimated number of respondents and total annual reporting and recordkeeping burden for clause 852.237–7, Indemnification and Medical Liability Insurance, has been reduced.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are contained in the VAAR clauses at section 852.207–70, Report of employment under commercial activities, and section 852.237–7, Indemnification and Medical Liability Insurance, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this revised proposed rule. Although this document proposes to add the clauses at sections 852.207–70 and 852.237–7 for use in commercial item solicitations and contracts, this Paperwork Reduction Act notice of this document seeks approval for collections of information for both commercial and non-commercial item and service contracts for these clauses. These clauses can be used in both commercial and non-commercial item and service solicitations and contracts. As required

under § 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI71.''

Title and Provision/Clause Number: Clause 852.207–70, Report of employment under commercial activities.

Summary of collection of information: This clause would be used in solicitations for commercial services where the work is currently being performed by VA employees and where those employees might be displaced as a result of award to a commercial firm. The clause requires contractors awarded such contracts to provide, within 5 days of contract award, a list of employment openings, including salaries and benefits, and blank job application forms. The clause also requires the contractor, prior to the contract start date, to report: the names of adversely affected Federal employees offered employment openings; the date the offer was made; a description of the position; the date of acceptance and the effective date of employment; the date of rejection if an employee rejected an offer; the salary and benefits contained in any rejected offer; and the names of employees who applied but were not offered employment and the reasons for withholding offers to those employees. In addition, the clause requires the contractor, during the first 90 days of contract performance, to report the names of all persons hired or terminated under the contract.

Description of need for information and proposed use of information: The information is required to assist the contracting officer in monitoring the contractor's compliance with the employment requirements of this clause and FAR clause 52.207–3, Right of First Refusal.

Description of likely respondents: Contractors awarded contracts for commercial services which might result in the conversion, from in-house to contract performance, of work currently being performed by VA employees.

Estimated number of respondents: 200.

Estimated frequency of responses: 5 reports per contract.

Estimated average burden per collection: 30 minutes per report.

Estimated total annual reporting and recordkeeping burden: 500 hours.

Title and Provision/Clause Number: Clause 852.237–7, Indemnification and Medical Liability Insurance.

Summary of collection of information: This clause is used in solicitations for nonpersonal health-care services in lieu of FAR clause 52.237–7. It requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. Following contract award, the contractor must notify the contracting officer if there are any changes in the firm's insurance coverage during the contract period. Prior to award, this evidence is in the form of a certificate from the firm's insurance company. After award, it is in the form of a letter or other correspondence, plus additional certificates.

Description of need for information and proposed use of information: The information is required to protect VA by ensuring that the firm to which award will be made possesses the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

Description of likely respondents: Apparent successful bidders/offerors on solicitations for nonpersonal health-care services.

Estimated number of respondents: 1,500.

Estimated frequency of responses: Usually just once for each contract awarded.

Estimated average burden per collection: 30 minutes.

Estimated total annual reporting and recordkeeping burden: 750 hours.

The Department considers comments by the public on proposed collections of information in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Regulatory Flexibility Act

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis is provided to meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

a. A description of the reasons why action by the Department is being considered.

Response: As more fully explained above, the proposed rule would amend the VAAR to implement the provisions of 38 U.S.C. 8151–8153, which authorize the Secretary of Veterans Affairs, in consultation with the Administrator of Federal Procurement Policy, to prescribe simplified procedures for the procurement of health-care resources. We believe the simplified procedures will allow VA to become more efficient in procuring health-care resources.

b. A succinct statement of the objectives of, and legal basis for, the proposed rule.

Response: The objective of the proposed rule is to allow VA to become more efficient in procuring health-care resources and thereby strengthen the medical programs of the Department and improve the quality of health care provided to veterans.

The legal basis for the proposed rule is contained in 38 U.S.C. 8151–8153, which provide that the Secretary, in consultation with the Administrator for Federal Procurement Policy, may prescribe simplified procedures for the procurement of health-care resources.

c. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

Response: The description of the small entities that could be affected by the proposed rule would be small entities that provide commercial services or the use of medical equipment or space to the health-care industry.

We do not have precise figures on the number of small entities that could potentially be affected by the proposed rule. Any small entity that provides, or wishes to provide, commercial services or the use of medical equipment or space to VA health-care facilities could potentially be affected.

However, the proposed rule would not apply to the majority of VA acquisitions. The proposed rule would apply only to competitive acquisitions of commercial services or the use of medical equipment or space conducted by the Veterans Health Administration (VHA) and which specifically reference the authority of 38 U.S.C. 8153. The proposed rule would not apply to acquisitions of supplies or equipment or to acquisitions on behalf of the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA). Except for section 873.108(b), the proposed rule would not apply to VHA sole source acquisitions from affiliated institutions or entities associated with affiliated institutions. The authority for VA to contract on a sole source basis with an institution affiliated with VA or with a medical practice group or other approved entity associated with an affiliate, addressed in the proposed rule at 873.108(b), is authorized by law and is not dependent upon this rulemaking. The proposed rule would not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction.

We have no relevant data regarding commercial service acquisitions below $25,000. However, we expect little application of the proposed rule to acquisitions below $25,000. Existing FAR provisions for such acquisitions are already very simple and the provisions of the revised proposed rule likely would not provide significant benefit to the Government to warrant use of this authority.

In Fiscal Year (FY) 1998, VHA reported approximately 6,000 individual service transactions (excluding classification codes C, E, Q402, Y, and Z (architect/engineer, purchase of structures, nursing home, construction, and maintenance of real property, respectively), all of which we believe are not covered by the proposed rule) valued in excess of $25,000 to the Federal Procurement Data System. Of those transactions, approximately 3,000 were awarded to small businesses and approximately 900 were awarded to non-profit businesses. Similar figures were reported for FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

Response: The reporting or recordkeeping requirements of the clauses at section 852.207–70, Report of employment under commercial activities, and section 852.237–7, Indemnification and Medical Liability Insurance, are discussed in the Paperwork Reduction Act (PRA) portion of the proposed rule. The clause at section 852.207–70 requires the contractor, on contracts where current VA employees are displaced, to report on employment openings and on efforts to hire displaced VA employees. The clause at section 852.237–7 requires contractors, on contracts for nonpersonal health-care services, to provide evidence of liability insurance. The revised proposed rule imposes no new reporting or recordkeeping requirements not already required by the VAAR. Currently, the VAAR requires that these clauses be included in all applicable solicitations and contracts, i.e., contracts where VA employees might be displaced or contracts for nonpersonal health-care services. The rule proposes to provide clarification that these clauses would continue to be required in all applicable service contracts, including commercial service contracts issued under the authority of 38 U.S.C. 8153. Small entities currently holding contracts where VA employees might be displaced or for nonpersonal health-care services are required to provide employment reports or evidence of liability insurance, as applicable. Under the revised proposed rule, there would be no change to those requirements and no new added requirements. There would be no additional small entities affected by the revised proposed rule that would not already be affected by the current regulations. No professional skills are necessary to comply with these reporting and recordkeeping requirements.

e. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

Response: The provisions of the proposed rule, if adopted, would take precedence over currently existing regulations in the FAR and VAAR. To the extent that the new rule would apply, there would be no conflict, duplication, or overlap with VA or other Federal rules.

f. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Response: We believe that, with two exceptions, the provisions of the proposed rule, where those provisions differ from the FAR, are small business/large business neutral, i.e., they would have neither a positive nor a negative impact on small business or large business. The two exceptions concern the authority to waive FAR small business set-aside provisions and changes concerning the transmission of solicitation notices to the Governmentwide point of entry (GPE).

1. The proposed rule at section 873.107 contains a provision allowing the head of the contracting activity (HCA) to waive the set-aside of an acquisition for small business. The HCA must determine that the waiver is in the best interest of the Government. The availability of this authority may result in acquisitions where small businesses have to compete against large businesses rather than compete only against other small businesses.

The alternatives to this waiver authority that were considered in order to limit the impact of waivers on small businesses included having no waiver authority or limiting the application of that authority to specific types of acquisitions, such as acquisitions for medical services, or limiting the authority to acquisitions in excess of a certain dollar threshold. For the reasons stated below, we determined to place no limits, other than those contained in the revised proposed rule, on the application of this waiver authority.

As noted above, the revised proposed rule would only apply to a limited number of acquisitions. We believe the waiver authority would be used in very few of those limited number of

acquisitions, primarily in acquisitions where it is critical to broaden the pool of sources considered in order to obtain the highest quality patient care services at reasonable prices. In such cases, it would not be in VA's best interest to exclude non-profit teaching hospitals and universities and other similar high quality large businesses from the competition. Small businesses could still compete and would have an equal opportunity to be considered for award. The availability of this authority, while most critical to direct patient care service acquisitions, could be a necessary element of other commercial service acquisitions that are critical to the optimum functioning of the medical centers.

In some limited circumstances, the waiver authority of section 873.107 may have a beneficial impact on small entities. As noted above, VA has authority to contract on a sole source basis with medical schools, hospitals, and clinics affiliated with VA. Medical schools, hospitals, and clinics are almost exclusively large or nonprofit businesses. Under the FAR, if a VA medical center wishes to seek competition for services currently being acquired from its affiliate, the affiliate would be excluded from bidding on that competition if there were two or more small businesses capable of providing the services. It is in VA's best interest to obtain state-of-the-art medical services from the highest qualified sources at reasonable prices. Without the waiver authority, VA medical centers would most likely continue to award sole source contracts to its affiliates rather than seek competition, since, under a competitive solicitation, those affiliates might be excluded as potential sources for those services. While VA medical centers might be willing to consider other sources, they generally are unwilling to exclude their affiliate as a potential source. However, under the waiver procedures of the proposed rule, VA would no longer be required to exclude its affiliates from consideration. Accordingly, VA medical centers may be more likely to issue competitive solicitations for highly technical medical services rather than acquire such services on a sole source basis from their affiliates. Rather than reducing small business access to VA acquisitions of medical services, the waiver process could result in increased access to such acquisitions by small businesses. In this regard, once this rule is in place, VA intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this proposed rule and the impact on VA's socioeconomic programs.

2. The FAR requires that all proposed acquisitions, including sole source acquisitions, exceeding $25,000, with certain exceptions, be transmitted to the GPE. The revised proposed rule differs from the FAR in several ways. First, it provides, at section 873.108(a), that acquisitions exceeding the simplified acquisition threshold (SAT) (currently $100,000) would not have to be announced in the GPE. Rather, the revised proposed rule would require that contracting officers publicly announce such proposed acquisitions utilizing a medium designed to obtain competition to the maximum extent practicable. The revised proposed rule lists a number of examples for where the announcements may be accessed, including the GPE. The intent of the revised proposed rule is to maximize the dissemination of information regarding such proposed acquisitions, not to limit dissemination. Most acquisitions for services are of interest only to the local community. In many cases, it is impossible for a firm located some distance from a VA medical center to provide coronary bypass operations, X-ray or oncology services, or other services necessary to operate the medical center, on a timely basis. We believe that both small and large local service providers of health-care resources (e.g., hospitals and clinics) are more likely to be made aware of acquisition opportunities if the acquisitions are announced in mediums that are seen and read by the local service community or if they are contacted directly. Accordingly, we believe this provision of the proposed rule would tend to increase competition rather than decrease competition and provide small businesses with increased opportunities.

Second, the proposed rule at section 873.108(b) would provide that sole source acquisitions from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution are exempt from the requirement for synopsis in the GPE. 38 U.S.C. 8153 specifically authorizes VA to acquire health-care resources on a sole source basis from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution. Exempting such acquisitions from synopsis in the GPE is consistent with statute, which imposes no requirement for VA to solicit and consider any other offers. Thus, this provision of the proposed rule would have no impact on competition, since competition is not required under any circumstances.

Section 873.108(b) would also exempt from publication sole source acquisitions of hospital care, medical services, and other health-care services from any source, whether or not the source is affiliated with VA. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved. Acquisitions for hospital care, medical services, or other health-care services would usually be conducted on a sole source basis only if there was an emergency need for such services. Otherwise, the acquisitions would likely be conducted competitively, if not acquired from an affiliate. The FAR provides an exemption from synopsis in the GPE under conditions of unusual or compelling urgency and where the Government would be seriously injured by any delay due to the publication requirement. We expect that most of the sole source acquisitions of hospital care, medical services, and other health-care services covered by this provision will be conducted under conditions of unusual or compelling urgency. Such acquisitions would include emergency hospital care for a veteran in an area not served by a nearby VA medical center. Even under the FAR, this type of acquisition is exempt from synopsis in the GPE by virtue of its being an urgent and compelling acquisition. This provision of the proposed rule would simplify the acquisition process by freeing the contracting officer from having to make individual determinations regarding publication for each sole source acquisition of hospital care, medical services, and other health-care services. Since we expect most such acquisitions to already be exempt under the FAR, we believe this provision would have little, if any, impact on competition or on awards to small businesses.

Third, the proposed rule at section 873.108(c) would exempt acquisitions below the SAT from the requirement for public announcement, including synopsis in the GPE. However, the rule at section 873.104 would require the contracting officer to seek competition to the maximum extent practicable and to permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation. In addition, for acquisitions below the SAT, section 873.111 states that contracting officers should solicit a sufficient number of sources to promote competition to the maximum extent practicable. Section 873.107 would require that acquisitions be set aside for small business. These

provisions would tend to mitigate any negative impact that section 873.108(c) would have on small businesses.

The alternatives to the above provisions regarding public announcements in the GPE that were considered were to eliminate these provisions and follow the provisions of the FAR or to limit the exemptions to specific categories of acquisitions, such as acquisitions for medical services. The objectives of the proposed rule are to allow VA to become more efficient in procuring health-care resources. The intent of this revised proposed rule is to provide procurement processes that are simpler and less time consuming than those of the FAR. As discussed above, we believe that the flexibility to select the public medium that best captures the awareness of interested sources will enable the Department to maximize the effective distribution of information on VA solicitations and more efficiently take advantage of competition without decreasing competition. For this reason, the provisions regarding publicizing contract actions have been retained without change.

List of Subjects

48 CFR Parts 801 and 852

Government Procurement, Reporting and recordkeeping requirements.

48 CFR Parts 806, 812, 837, and 873

Government procurement.

Approved: February 15, 2001

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR chapter 8 is proposed to be amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citations for Part 801 continue to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.301–70 [Amended]

2. The chart in paragraph (c) of section 801.301–70 is amended by adding two new entries in numerical order to read as follows:

801.301–70 Paperwork Reduction Act requirements.

* * * * *

(c) * * *

48 CFR part or section where identified and described	Current OMB control No.
* * *	* *
852.207–70	2900–[number]
* * *	* *
852.237–7	2900–[number]
* * *	* *

801.602–70 [Amended]

3. In 801.602–70, paragraphs (a)(4)(vi) and (a)(4)(vii) are revised to read as follows:

801.602–70 Legal/technical review requirements to be met prior to contract execution.

(a)* * *

(4)* * *

(vi) Competitive contracts exceeding $1.5 million and noncompetitive contracts exceeding $500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.

(vii) Competitive contracts exceeding $1.5 million and noncompetitive contracts exceeding $500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151–8153.

* * * * *

801.602–71 [Amended]

4. In 801.602–71, paragraph (b)(2) is revised to read as follows:

801.602–71 Processing contracts for legal/technical review.

* * * * *

(b) * * *

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602–70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M–1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

* * * * *

801.602–72 [Amended]

5. In 801.602–72, paragraph (b) is revised to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602–70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M–1, Part 1, Chapter 34.

* * * * *

PART 806—COMPETITION REQUIREMENTS

6. The authority citations for Part 806 continue to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

806.302–5 [Amended]

7.–8. In 806.302–5, paragraph (b) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

806.302–5 Authorized or required by statute.

* * * * *

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151–8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

806.302–5 Authorized or required by statute.

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151–8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and VAAR 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

* * * * *

PART 812—ACQUISITION OF COMMERCIAL ITEMS

9. The authority citations for Part 812 continue to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

812.301 [Amended]

10. In 812.301, paragraph (c) is revised and paragraph (g) is added to read as follows:

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.207–70, Report of employment under commercial activities.

(2) 852.211–71, Guarantee clause.

(3) 852.211–72, Inspection.

(4) 852.211–73, Frozen processed foods.

(5) 852.211–74, Telecommunications equipment.

(6) 852.211–75, Technical industry standards.

(7) 852.214–70, Caution to bidders-bid envelopes.

(8) 852.216–70, Estimated quantities for requirements contracts.

(9) 852.229–70, Purchases from patient's funds.

(10) 852.229–71, Purchases for patients using Government funds and/or personal funds of patients.

(11) 852.233–70, Protest content.

(12) 852.237–7, Indemnification and Medical Liability Insurance.

(13) 852.237–70, Contractor responsibilities.

(14) 852.237–71, Indemnification and insurance (vehicle and aircraft service contracts).

(15) 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor.

(16) 852.270–1, Representatives of contracting officers.

(17) 852.270–2, Bread and bakery products.

(18) 852.270–3, Purchase of shellfish.

* * * * *

(g) When soliciting for commercial services or the use of medical equipment or space under the authority of (VAAR) 48 CFR part 873 and 38 U.S.C. 8151–8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

(1) 852.273–70, Late offers.

(2) 852.273–71, Alternative negotiation techniques.

(3) 852.273–72, Alternative evaluation.

(4) 852.273–73, Evaluation—health-care resources.

(5) 852.273–74, Award without exchanges.

PART 837—SERVICE CONTRACTING

11. The authority citations for Part 837 continue to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

837.403 [Amended]

12. Section 837.403 is amended by adding, at the end of the first sentence, '', including solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151–8153 and (VAAR) 48 CFR part 873''.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. The authority citations for Part 852 continue to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

14. In section 852.207–70, the introductory text is revised to read as follows:

852.207–70 Report of employment under commercial activities.

As prescribed in 807.304–77 and 873.110, the following clause must be included in A–76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151–8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

* * * * *

15. Section 852.273–70 is added to read as follows:

852.273–70 Late offers.

As prescribed in 873.110(a), insert the following provision:

LATE OFFERS (Date)

This provision replaces paragraph (f) of FAR provision 52.212–1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

16. Section 852.273–71 is added to read as follows:

852.273–71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

ALTERNATIVE NEGOTIATION TECHNIQUES (Date)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

17. Section 852.273–72 is added to read as follows:

852.273–72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

ALTERNATIVE EVALUATION (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—*[Contracting officer insert description of how the information may be viewed electronically or otherwise]*—. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

18. Section 852.273–73 is added to read as follows:

852.273–73 Evaluation—health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212–2, the contracting officer may insert a provision substantially as follows:

EVALUATION—HEALTH-CARE RESOURCES (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:—[*Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to*

evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]—

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

19. Section 852.273–74 is added to read as follows:

852.273–74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

AWARD WITHOUT EXCHANGES (Date)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

20. Part 873 is added to read as follows:

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

Sec.

Authority: 38 U.S.C. 8151–8153.

873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

873.102 Definitions.

Commercial service means a service, except construction exceeding $2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

873.103 Priority sources.

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

873.104 Competition requirements.

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required.

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6.

873.105 Acquisition planning.

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other

expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service.

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108.

(d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions, and conclusions and included in the contract file, along with a copy of the briefing materials.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer.

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft Requests for proposals (RFPs);

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (e.g., Internet); and

(11) Use of the Procurement Marketing and Access Network (PRO–NET).

873.107 Socioeconomic programs.

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502–2, and 19.502–3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government.

(b) *Rejecting Small Business Administration (SBA) recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless a determination is made in writing by the contracting officer that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding $5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding $5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of Competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a

request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)).

(c) For acquisitions below the SAT, a public announcement is optional.

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part 873.

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this this part 873.

(b) *Statement of work/Specifications.* Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.

(c) *Documentation.* Without regard to FAR 13.106–3(b), 13.501(b), or 15.406–3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212–1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).

(e) *Cancellation of procurements.* Without regard to FAR 14.404–1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

873.110 Solicitation provisions.

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273–70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273–71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used.

(c) The contracting officer shall insert the provision at 852.273–72, Alternative evaluation, in lieu of the provision at 52.212–2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273–73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212–2.

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273–74, Award without exchanges, in the RFQ or RFP.

(f) The contracting officer shall insert the clauses at FAR 52.207–3, Right of First Refusal of Employment, and at 852.207–70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151–8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein.

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* The procedures of FAR parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this part.

(d) *Multiphase acquisition technique.* (1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition.

(e) *Alternative negotiation techniques.* (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

873.112 Evaluation information.

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition.

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein.

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873.

(b) Exchanges with all potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.

(e) *Improper exchanges.* Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without

consent of the offeror in accordance with FAR parts 3 and 24.

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time.

873.115 Proposal revisions.

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.

(c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506.

[FR Doc. 01–13988 Filed 6–6–01; 8:45 am]

BILLING CODE 8320–01–P